GUIDE TO THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT PROCESS

Environmental Assessment Office

March 2003

BRITISH
COLUMBIA

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DISCLAIMER

This Guide is not a legal authority and is not intended to provide legal advice or direction. The Guide provides information only, and should not be used as a substitute for the *Environmental Assessment Act* or regulations. In the event of a discrepancy, the Act and regulations prevail. Portions of the Act have been paraphrased in the Guide, and should not be relied upon for legal purposes. The procedures described in this Guide may be deviated from, based on specific project circumstances. The Environmental Assessment Office disclaims liability in respect of anything done in reliance, in whole or in part, on the contents of this Guide.

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1. INTRODUCTION

The British Columbia *Environmental Assessment Act* (S.B.C. 2002, c. 43) (the Act) requires that certain major project proposals obtain an environmental assessment certificate before they can proceed. The types of projects that may be subject to the Act include industrial, mining, energy, water management, waste disposal, food processing, transportation and tourist destination resort projects. The current legislation came into effect on December 30, 2002, replacing the previous *Environmental Assessment Act* (R.S.B.C. 1996, c. 119), which had been in effect since June 30, 1995. The provincial government is committed to more flexible, efficient and timely reviews of proposed major projects to help revitalize the provincial economy. This is why a new, streamlined environmental assessment process was introduced in 2002

The *Environmental Assessment Act* ensures that proposed projects subject to the legislation undergo a comprehensive, integrated, coordinated and timely assessment, within the context of prevailing public policy. The legislation and accompanying regulations establish the framework for delivering environmental assessments. However, the scope, procedures and methods of each assessment are flexible and tailored specifically to the circumstances of the proposed project. This allows for each assessment to focus on the issues relevant to whether or not that project should proceed.

This Guide provides information for all interested parties on the *Environmental Assessment Act* and how environmental assessments are conducted in British Columbia. Sections 1-3 provide an introduction, background information, an explanation of the regulatory context for environmental assessment in British Columbia, and an explanation of the legal and policy context for First Nation consultation. Section 4 provides an overview of the *Environmental Assessment Act* and its accompanying regulations. Section 5 describes the process for a typical environmental assessment, led and managed by the Environmental Assessment Office, based on eight key steps. This typical process is followed in nearly all cases. However, there are special circumstances in which the typical assessment process is not followed, and these circumstances are explained in Section 6. Lastly, Section 7 provides information on accessing information through the Project Information Centre.

In addition to this Guide, supplementary guides are available that provide further information specifically for three of the key groups involved in environmental assessments: project proponents, First Nations and the public. These supplementary guides are to assist each group in understanding its role, responsibilities and opportunities to participate in an environmental assessment.

If you have further questions on any aspect of the legislation or the environmental assessment process in British Columbia, please contact the Environmental Assessment Office in Victoria.

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2. BACKGROUND

2.1 PURPOSE OF ENVIRONMENTAL ASSESSMENT

Environmental assessment is an important component of major project planning and approval in more than 100 countries. Its primary goal is to identify and assess the potential effects that may result from development of a proposed project, and to develop measures for managing those effects. Environmental assessment is an important means of ensuring that project decision-making by governments and proponents is informed. In Canada, all provinces and the federal government implement environmental assessment procedures to assist in making decisions on whether large-scale projects should proceed.

Environmental assessment provides a framework to address a broad range of environmental, health and safety, socioeconomic, community and First Nation issues through a single, integrated process, ensuring the issues and concerns of all interested parties are considered together. Through the process of environmental assessment, potential effects of a proposed project are identified and evaluated early, providing the opportunity for a project to be modified before irreversible project design and construction decisions are made. This results in improved project design and helps to avoid costly mistakes for proponents, governments, local communities and the environment.

Environmental assessment looks at relevant environmental, health and safety, socioeconomic, community and First Nation issues together in a single, integrated process.

In general, environmental assessment includes four main elements:

- opportunities for all interested parties, including First Nations, to identify issues and provide input;
- technical studies of the relevant environmental, social, economic, heritage and/or health effects of the proposed project;
- identification of ways to prevent or minimize undesirable effects and enhance desirable effects; and
- consideration of the input of all interested parties in compiling the assessment findings and making decisions about project acceptability.

2.2 ENVIRONMENTAL ASSESSMENT LEGISLATION IN BRITISH COLUMBIA

Prior to 1995, proposed major projects in British Columbia were reviewed under separate processes managed by different authorities depending on the project sector (e.g., mining, energy or industrial). In 1995, the first *Environmental Assessment Act* in British Columbia was introduced. This Act established a single process for review of large-scale projects that were identified in the accompanying Reviewable Projects Regulation. It also established the Environmental Assessment Office as the neutral agency with responsibility for administering and managing the environmental assessment process.

The 1995 *Environmental Assessment Act* established a process for the thorough and integrated assessment of the full range of potential effects associated with large-scale projects. It also set time limits for certain steps in the process. However, after several years experience, it was determined that improvements could be made. In particular, it was determined that the legislation should provide for greater procedural flexibility in order that assessments could be designed to focus on the specific issues and circumstances associated with the individual project.

In 2002, a new *Environmental Assessment Act* (Bill 38) was introduced and came into effect on December 30, 2002. While retaining many fundamental elements of the previous Act, this legislation enables environmental assessments to be tailored to the requirements of each project, allowing for a more streamlined and efficient review process. The changes are intended to ensure environmental assessments are more focused and cost-effective, while remaining thorough, open and accountable.

Environmental assessments are tailored to the requirements of each project to ensure a focused, efficient, technically sound, timely and cost-effective review process.

3. REGULATORY CONTEXT FOR ENVIRONMENTAL ASSESSMENT

3.1 PROVINCIAL LAND AND RESOURCE MANAGEMENT SYSTEM

Environmental assessment is one component of British Columbia's overall land and resource management system. Other components include land use planning, land and resource tenuring, permitting and other review/approval mechanisms, and operations management. Each component, and its applicable laws, regulations, policies and technical guidelines, is intended to support provincial goals for economic development, environmental protection and community stability.

Environmental assessment evaluates proposed major projects within the context of the provincial government's regulatory and policy framework and technical expectations, so that a decision can be made on the overall acceptability of the project. The process results in a ministerial-level decision on whether to issue an environmental assessment certificate. The ministers responsible for this decision are:

- the Minister of Sustainable Resource Management;
- the Minister of Water, Land and Air Protection; and
- the "responsible minister" for the particular type of project (e.g., the responsible minister for mine projects is the Minister of Energy and Mines).

Issuance of an environmental assessment certificate signifies that key issues relevant to whether the project should or should not proceed have been resolved, or can be resolved by technically feasible means as project development proceeds.

Environmental assessments enable provincial ministers to decide on the overall acceptability of major development proposals, within the context of government's regulatory, policy and technical requirements, and taking into account public and First Nation input.

Relationship to Land Use Planning

Provincial land use plans provide the framework and context for setting environmental, land use and resource management goals over provincial Crown land. Environmental assessment is conducted within the context of existing land use plans. While environmental assessment examines the effects of a project on adjacent land uses, it is a project-specific review mechanism and has no authority to act as a land use planning mechanism or to re-open previously approved land use plans.

Relationship to Land and Resource Tenuring

Tenure-granting processes dispense some form of use or ownership rights to both public and private parties with respect to land and resources. Tenure rights to Crown land and resources that are required for a project to proceed may be in place when a proponent applies for an environmental assessment certificate (e.g., a mineral claim), or options to grant the necessary tenures may be reserved for the proponent subject to satisfactory completion of the environmental assessment (e.g., *Land Act* reserves). Where a project is located on private land, the proponent may own the land or have the right to exercise an option on the land.

Relationship to Provincial Permitting and Approval Processes

The actual use of land or resources may require approvals granted under other provincial legislation. Examples of such approvals include water licenses, waste management permits, access development permits, and timber cutting licenses. Typically, some form of tenure rights already exist when application is made for these approvals. In addition, the proposed activities for which approval is sought will normally have to be compatible with the prevailing land use regime. A project that is approved under the *Environmental Assessment Act* is required to obtain all other applicable provincial permits, licenses and approvals. An environmental assessment certificate does not supersede or encompass these requirements.

In practice, applicable approvals are identified during the course of an environmental assessment, and requirements are coordinated to the extent practicable. Much of the information gathered during the environmental assessment will be relevant to the approvals; however, each approval will require specific information that may only be available at a later, more detailed design stage.

A proponent may request that some provincial approval applications be processed concurrently with the environmental assessment. In that case, the agency responsible for the approval must make a decision related to issuing the approval within a specified time frame. (For more information on concurrent approval see Section 5.4.2). However, in no case can an authorization to construct or operate the project be issued until the environmental assessment has been completed and an environmental assessment certificate has been granted.

Relationship to Operations Management

Once an environmental assessment certificate and other approvals to construct and operate a project have been issued, the project is subject to ongoing operations management. This includes proponent management and monitoring activities to ensure the project is undertaken in compliance with the various approval conditions, and complementary government monitoring, inspection and enforcement activities to ensure the project complies with all relevant provincial laws, regulations and approval conditions. For projects subject to environmental assessment, elements of the required operations management may be covered in conditions of the environmental assessment certificate.

3.2 RELATIONSHIP WITH OTHER LEVELS OF GOVERNMENT

Relationship with Local Government Authorities

A proposed project located partially or wholly on private land may be subject to a local Official Community Plan and/or zoning or other by-laws. In addition, local government permitting requirements and procedures may apply, such as building permits or development permits. In this case, separate applications to the appropriate local government authorities may be required. Project-specific environmental assessment procedures may require the proponent or the Environmental Assessment Office to consult with local government(s) and may specify opportunities for local government(s) to provide comments on the assessment. Local governments may use opportunities to participate in the environmental assessment process to ensure that issues of concern to them are identified and assessed.

Relationship with Federal Authorities and the *Canadian Environmental Assessment Act*

A project may be subject to the *Canadian Environmental Assessment Act* as well as the *British Columbia Environmental Assessment Act*. In this case, the Environmental Assessment Office works closely with the Canadian Environmental Assessment Agency and other federal agencies to ensure the requirements of both levels of government are met through a coordinated process.

As signatories to the "Canada-wide Accord on Environmental Harmonization" and the supporting "Sub-agreement on Environmental Assessment", Canada and British Columbia seek to provide consistency and the timely and efficient use of resources in conducting environmental assessments. In 1997, Canada and British Columbia entered into a bilateral agreement on environmental assessment cooperation (the "Canada-British Columbia Agreement for Environmental Assessment Cooperation"). This agreement, designed to ensure coordination in the review of projects subject to both federal and British Columbia environmental assessment legislation, was extended on an interim basis in 2002. Under this agreement, the requirements of both processes are met through coordinated assessment procedures to minimize duplication and overlap. However, at the conclusion of a cooperative assessment, each level of government retains the authority to make a separate project decision. The current agreement can be viewed on the Project Information Centre website (www.eao.gov.bc.ca).

At the time of publication of this Guide, a new long-term bilateral agreement is being negotiated to reflect the 2002 British Columbia *Environmental Assessment Act* and changes envisioned to the *Canadian Environmental Assessment Act*.

British Columbia has an agreement with the Government of Canada to minimize duplication between the provincial and federal environmental assessment processes and facilitate a "one project – one review" approach when both processes are triggered.

Relationship with Neighbouring Jurisdictions

Some projects located within British Columbia may have the potential to have an effect in neighbouring jurisdictions (Alberta, Yukon, Northwest Territories, Alaska, Washington State, Idaho and Montana). Under these circumstances, the environmental assessment procedures may require the proponent or the Environmental Assessment Office to consult with authorities in neighbouring jurisdictions, and there may be opportunities for neighbouring jurisdictions to provide comments during the assessment. British Columbia has signed a Memorandum of Understanding with Washington State to facilitate notification and information exchange regarding major project proposals in the vicinity of the other jurisdiction.

3.3 FIRST NATION CONSULTATION: LEGAL AND POLICY CONTEXT

Court decisions have established that provincial government activities cannot infringe on existing aboriginal rights and/or title unless there is proper justification. The Courts have further held that where a First Nation has asserted but not yet proved aboriginal rights and/or title, there is a constitutional and fiduciary obligation to consult and consider the interests being asserted.

The Provincial Consultation Policy (2002) describes the Province's approach to consultation with First Nations on aboriginal rights and/or title that have been asserted but have not been proven through a Court process. In this Policy, potentially existing aboriginal rights and/or title are defined as, and referred to as, "aboriginal interests". The Policy, which may be updated from time to time, recognizes that the Province, through consultation, must consider and attempt to address and/or accommodate aboriginal interests prior to making decisions that may affect those interests.

In accordance with legal and policy requirements, the Province will consider aboriginal interests in relation to an environmental assessment to ensure that First Nation issues and concerns are identified, and the Province's legal obligations towards First Nations are met. The Environmental Assessment Office operates under the terms of the most up-to-date version of the Policy, which can be viewed on the Project Information Centre website (www.eao.gov.bc.ca). The Policy identifies guiding principles and stages in consultation. Information on these consultation principles and stages is provided in Appendix 2.

First Nation consultation requirements are established for every environmental assessment, within the framework of the Policy and any future updates of that Policy. First Nations with interests in the area of the proposed project (i.e., the project is in proximity to the First Nation's claimed traditional territory) or whose rights may be affected are provided the opportunity to be consulted by the proponent and the Environmental Assessment Office.

As a result of a recent (2002) court case[1], proponents of a reviewable project may also have a duty to consult in good faith with First Nations and to seek workable accommodations of First Nation interests (separate from any specific obligations that may be required as part of a project assessment under the *Environmental Assessment Act*). The Environmental Assessment Office advises proponents to contact its staff as early as possible to:

a) determine whether there are First Nations with interests that may be affected by the project; and
b) discuss consultation requirements.

Environmental assessments include First Nation consultation requirements to ensure aboriginal interests are considered and attempts are made to address and/or accommodate First Nation issues and concerns.

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[1] Haida Nation v. British Columbia and Weyerhaeuser (2002) BCAA 462.

4. *Environmental Assessment Act*

4.1 PRINCIPLES

There are several fundamental principles that underlie the *Environmental Assessment Act* and the conduct of environmental assessment in British Columbia. Therefore, while the methods and procedures used may vary to suit the specific circumstances of each project, in general, all assessments are designed to incorporate the following principles.

Access to Information: Interested parties have access to information and documentation related to environmental assessment in British Columbia, and individual project reviews, through the Project Information Centre website (see Section 7). Where Internet access is inadequate, hard (paper) copies of some documents may also be housed in the region of a proposed project.

Balanced Decision Making: Assessments identify and evaluate project benefits as well as costs. Certification decisions are made by three ministers with a broad range of portfolio interests, ensuring balanced, politically accountable decision making.

Comprehensiveness: Assessments are comprehensive in scope, assessing the relevant environmental, economic[2], social, health, and/or heritage effects of on-site and off-site facilities and activities for the life cycle of the project.

Consultation: Assessments incorporate consultation with all potentially affected parties, including government agencies, First Nations and the public, and opportunities for those parties to provide input. Consultation requirements are developed for each project to ensure the methods and procedures are appropriate for the individuals and groups concerned.

Coordination: The requirements for projects subject to both federal and provincial environmental assessment legislation are coordinated in a single process. Provincial permitting requirements are identified during the environmental assessment to facilitate a streamlined transition once an environmental assessment certificate has been issued.

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[2] Environmental assessment includes assessment of the potential economic effects of a proposed project (such as the impacts and benefits on the local, regional and provincial economy and the number of jobs that would be created by the project). However, environmental assessment does not include an evaluation of the economic feasibility of the project, except in sectors where it is normal government practice to do so as part of the review/approval process. It is the responsibility of the project proponent to determine whether the project is economically feasible and represents a sound business investment

Flexibility: Assessment methods and procedures are tailored to the circumstances presented by individual projects. This facilitates development of an efficient and effective assessment that focuses on the issues relevant to a ministerial decision on whether or not the project should proceed.

Integration: All relevant issues are addressed through one process. Proponents are required to document the issues in integrated submissions, which are considered by all review participants. At the end of each review, one report is prepared on all assessment-related matters.

Neutral Administration: The Environmental Assessment Office is a neutral agency dedicated to delivering environmental assessments in an open, accountable and neutral manner. Environmental Assessment Office staff lead and manage project assessments according to the procedures defined in the legislation, regulations, and related operating procedures.

Timeliness: All assessments are subject to legislated time limits for major actions and decision points to ensure review-related activities are conducted in a timely and efficient manner. Additional time limits may be established on a project-by-project basis as appropriate.

Principles underlying the Environmental Assessment Act include access to information, balanced decision-making, comprehensiveness, consultation, coordination, flexibility, integration, neutral administration and timeliness.

4.2 OVERVIEW OF THE ACT

The *Environmental Assessment Act* establishes the requirement for environmental assessments and the framework for how they are to be conducted. A copy of the Act is provided in Appendix 4. Key matters included in the legislation are:

- establishment of the Environmental Assessment Office to neutrally administer and manage environmental assessments, and the powers and responsibilities of that office;
- establishment of the Project Information Centre to facilitate access to information;
- powers of the Minister of Sustainable Resource Management in relation to environmental assessments, such as to designate a project as reviewable under the Act, make regulations, and appoint parties to conduct assessments;
- powers of other ministers in relation to environmental assessments, such as to make a decision on issuance of an environmental assessment certificate; and
- general steps, requirements and decision-making points that apply to all assessments, and identification of steps which must be completed within fixed time limits.

The Act does not specify which projects are subject to environmental assessment, but requires that this information be set out in regulation (see "Reviewable Projects Regulation" in Section 4.3).

4.3 OVERVIEW OF THE REGULATIONS

The following regulations accompany the *Environmental Assessment Act*. Copies of the regulations are provided in Appendix 5.

Concurrent Approval Regulation: Under the *Environmental Assessment Act*, a project proponent may apply to have applications for other provincial approvals reviewed concurrently with the application for an environmental assessment certificate. This regulation sets out the procedures related to this provision, such as the deadline by which the proponent must apply for concurrent review of applications for other approvals, and requirements for response and decision-making by regulatory agencies.

Prescribed Time Limits Regulation: The *Environmental Assessment Act* requires that certain steps in an environmental assessment be carried out within a time limit. Time limits apply to both government and proponent actions. This regulation sets out the specific period within which each time-limited step must be carried out, which may be a number of calendar days or a number of years.

Public Consultation Policy Regulation: This regulation sets out general policies with respect to public consultation that the Environmental Assessment Office must take into account when determining consultation requirements for an environmental assessment. The policies relate to the implementation and assessment of the proponent's public consultation program, the provision of public notice, access to information, and formal public comment periods.

Reviewable Projects Regulation: This regulation defines which projects are subject to the *Environmental Assessment Act* by establishing categories of projects and quantified thresholds for each category. Thresholds are set for new projects, modifications to existing projects, and, in a few cases, for project decommissioning. Thresholds relate to project size, production capacity, or other criteria relevant to determining whether or not the project is likely to result in significant effects. All projects that meet or exceed the thresholds are automatically subject to the Act. This regulation also identifies which of the project's development phases (construction, operations, modification, dismantling and abandonment) are included in the assessment.

Transition Regulation: This regulation defines projects which, although reviewable in size based on the criteria set out in the Reviewable Projects Regulation, are "grandparented" (exempted) from the application of the *Environmental Assessment Act* because they have been reviewed in detail and granted one or more key approvals before the Act came into force. This regulation has no relevance to a project that has not previously been reviewed.

5. ENVIRONMENTAL ASSESSMENT PROCESS

5.1 FRAMEWORK FOR ENVIRONMENTAL ASSESSMENT: EIGHT KEY STEPS

The following section outlines the general framework for a typical environmental assessment based on eight key steps.

1) **Determining if the *Environmental Assessment Act* applies**
2) **Determining the review path**
3) **Determining how the assessment will be conducted (scope and procedures)**
4) **Developing and approving terms of reference for the application**
5) **Preparing and submitting the application**
6) **Reviewing the application**
7) **Preparing the assessment report and referring the application to ministers**
8) **Deciding to issue/not issue an environmental assessment certificate**

Figure 1 provides a flowchart of a typical assessment. References to the relevant sections of the *Environmental Assessment Act* and/or regulations are provided in footnotes.

5.1.1 Step 1: Determining if the *Environmental Assessment Act* Applies

Key Question: Is the proposed project subject to the *Environmental Assessment Act*?

Projects subject to the *Environmental Assessment Act* are called "reviewable projects".[3] There are three ways a project may be considered reviewable:

- it falls within a category of project that is included in the Reviewable Projects Regulation and meets or exceeds the prescribed thresholds[4];
- the Minister of Sustainable Resource Management designates it as reviewable[5]; or
- at the request of the proponent, the Environmental Assessment Office designates it as reviewable.[6]

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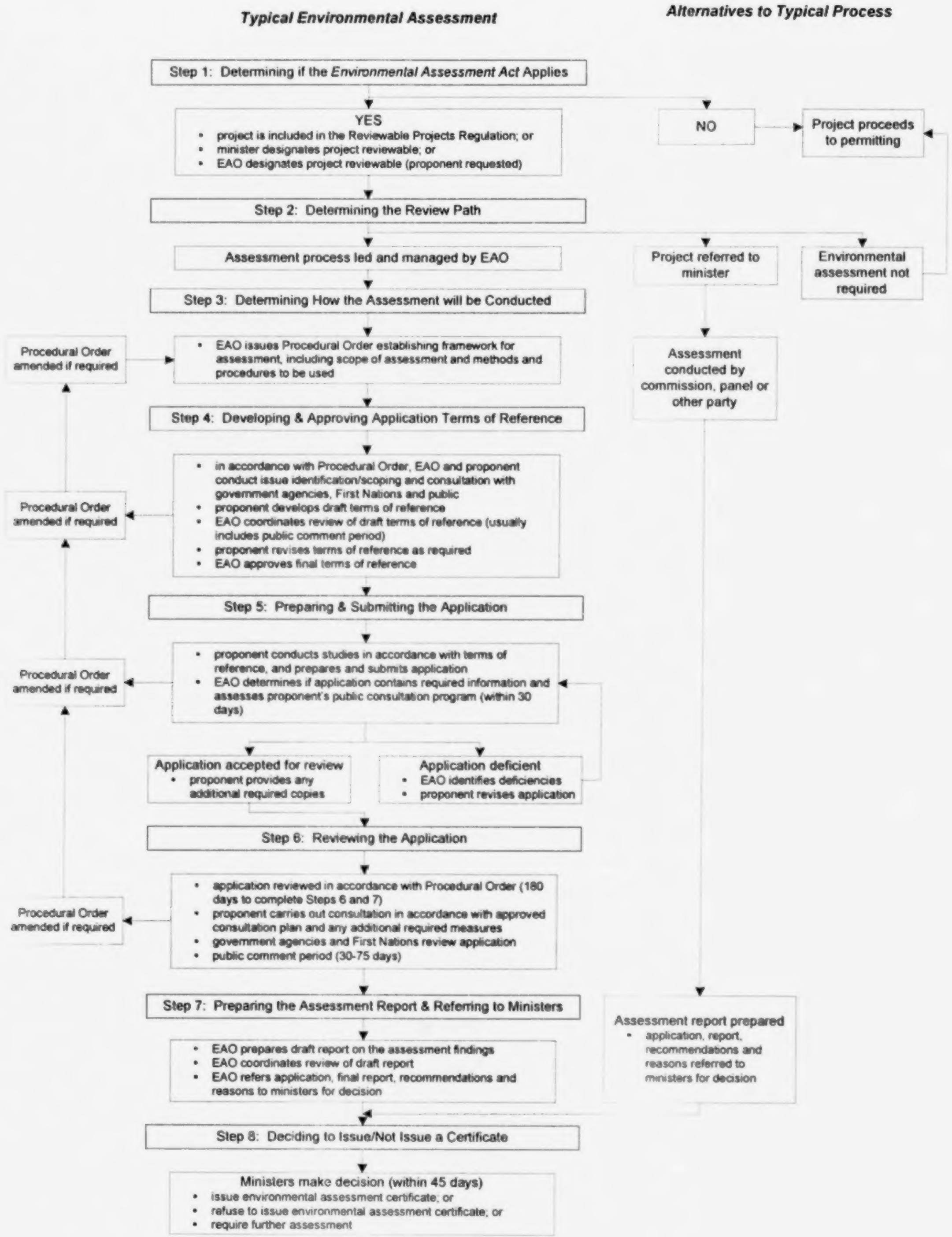
[3] Section 1 of the Act.
[4] Section 5 of the Act.
[5] Section 6 of the Act.
[6] Section 7 of the Act.

Figure 1. Typical Environmental Assessment Led and Managed by the Environmental Assessment Office (EAO)


Typical Environmental Assessment
Alternatives to Typical Process
Step 1: Determining if the Environmental Assessment Act Applies
YES
project is included in the Reviewable Projects Regulation; or
minister designates project reviewable; or
EAO designates project reviewable (proponent requested)
NO
Project proceeds to permitting
Step 2: Determining the Review Path
Assessment process led and managed by EAO
Project referred to minister
Environmental assessment not required
Step 3: Determining How the Assessment will be Conducted
Procedural Order amended if required
EAO issues Procedural Order establishing framework for assessment, including scope of assessment and methods and procedures to be used
Assessment conducted by commission, panel or other party
Step 4: Developing & Approving Application Terms of Reference
Procedural Order amended if required
in accordance with Procedural Order, EAO and proponent conduct issue identification/scoping and consultation with government agencies, First Nations and public
proponent develops draft terms of reference
EAO coordinates review of draft terms of reference (usually includes public comment period)
proponent revises terms of reference as required
EAO approves final terms of reference
Step 5: Preparing & Submitting the Application
Procedural Order amended if required
proponent conducts studies in accordance with terms of reference, and prepares and submits application
EAO determines if application contains required information and assesses proponent's public consultation program (within 30 days)
Application accepted for review
proponent provides any additional required copies
Application deficient
EAO identifies deficiencies
proponent revises application
Step 6: Reviewing the Application
Procedural Order amended if required
application reviewed in accordance with Procedural Order (180 days to complete Steps 6 and 7)
proponent carries out consultation in accordance with approved consultation plan and any additional required measures
government agencies and First Nations review application
public comment period (30-75 days)
Step 7: Preparing the Assessment Report & Referring to Ministers
EAO prepares draft report on the assessment findings
EAO coordinates review of draft report
EAO refers application, final report, recommendations and reasons to ministers for decision
Assessment report prepared
application, report, recommendations and reasons referred to ministers for decision
Step 8: Deciding to Issue/Not Issue a Certificate
Ministers make decision (within 45 days)
issue environmental assessment certificate; or
refuse to issue environmental assessment certificate; or
require further assessment

In most cases, the project proponent contacts the Environmental Assessment Office and provides basic project information. The Environmental Assessment Office determines if it is a category of project that is included in the Reviewable Projects Regulation and, if so, if it meets the thresholds for that category. The Environmental Assessment Office then confirms whether or not the Act applies to the project.

In a few exceptional cases, the Minister of Sustainable Resource Management may designate a proposed project as reviewable even though it is not included in the Reviewable Projects Regulation. This could occur when the project may have significant adverse effects, and the minister is satisfied that it would be in the public interest for the project to undergo an environmental assessment.

The proponent of a project that is not included in the Reviewable Projects Regulation may apply to the Environmental Assessment Office to have the project designated as reviewable. In this case, the Environmental Assessment Office considers the reasons for the request and makes a decision on whether or not to make the designation.

5.1.2 Step 2: Determining the Review Path

Key Question: Is the typical environmental assessment process, led and managed by the Environmental Assessment Office, appropriate for this project?

In nearly all cases, the environmental assessment will be led and managed at the staff level by the Environmental Assessment Office.[7] However, the *Environmental Assessment Act* provides for variations from this process in exceptional cases. The Environmental Assessment Office will examine any special circumstances related to the project that would warrant either:

- that the project be referred immediately to the Minister of Sustainable Resource Management to determine how the assessment will be conducted.[8] Further details on when this may occur and the options available to the minister are provided in Section 6.2; or
- that the requirements for an environmental assessment be waived.[9] Section 6.1 provides more detail on circumstances when this may occur.

The following steps describe how a typical environmental assessment led and managed by the Environmental Assessment Office would be conducted.

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[7] Section 10(1)(c) of the Act.
[8] Section 10(1)(a) of the Act.
[9] Section 10(1)(b) of the Act.

5.1.3 Step 3: Determining How the Assessment will be Conducted

Key Question: What will be the scope of the assessment and what procedures and methods will be used to conduct the assessment?

The Environmental Assessment Office is responsible for determining how the assessment will be conducted, including the scope of the assessment and the procedures and methods to be used.[10] Environmental Assessment Office staff consider input and advice from government agencies, First Nations, the public and the proponent, as appropriate, in making this determination.

The Environmental Assessment Office issues a procedural order that sets out the process for conducting the assessment. The level of detail contained in the procedural order will vary depending on the amount of information available at the time the order is issued. In some cases the order may set out specific requirements related to the assessment, or, where there is not yet sufficient information to identify all requirements, the order may set out procedures to determine those requirements. In general, the order will address the following issues:[11]

- the facilities and activities that comprise the reviewable project (the project scope);
- the procedures and methods to be used in conducting the assessment;
- the potential effects to be considered in the assessment;
- information required from the proponent, primarily in its application for an environmental assessment certificate (the order will normally require the proponent to develop terms of reference for the application);
- information from sources other than the proponent, if any;
- First Nation consultation requirements;
- public consultation requirements; and
- time limits for activities in the assessment not otherwise covered by legislated time limits.

Once issued, the procedural order is legally binding and therefore provides certainty about how the assessment will proceed. The procedural order may be varied later in the process if the proponent modifies the project, or if necessary to complete an effective and timely assessment.[12] However, variations are intended to accommodate unforeseen changes and are not intended to be routine.

More detailed information on the procedural order is provided in Section 5.2.

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[10] Section 11 of the Act.
[11] Section 11(1) and 11(2) of the Act.
[12] Section 13 of the Act.

5.1.4 Step 4: Developing and Approving Terms of Reference for the Application

Key Question: What information must the proponent provide in its application for an environmental assessment certificate?

The project proponent is required to submit an application for an environmental assessment certificate.[13] To ensure the application will contain the necessary information, the proponent will, in most cases, be required to prepare terms of reference for the application, in consultation with the Environmental Assessment Office, other government agencies, First Nations, the public and other parties as appropriate. The terms of reference set out the information requirements and how they will be met, and must be approved by the Environmental Assessment Office.

Specific procedures related to development of the terms of reference may be included in the procedural order. For example, the order may specify there be a public comment period on draft terms of reference. More information on the terms of reference is provided in Section 5.2.

5.1.5 Step 5: Preparing and Submitting the Application

Key Question: Does the application contain the information required for the assessment?

The proponent prepares the application according to the approved terms of reference and any other requirements specified in the procedural order.[14] In most cases, preparation of the application continues the iterative process, and is developed through ongoing discussions between the proponent, the Environmental Assessment Office, other government agencies, First Nations, the public and other parties.

The proponent submits the application to the Environmental Assessment Office, which has 30 days to ensure the application contains the required information.[15] If the Environmental Assessment Office identifies any deficiencies in the application, the proponent must address them. The proponent then revises and resubmits the application. The Environmental Assessment Office may only accept an application for review if it contains the required information, as specified in the terms of reference. Upon acceptance of the application, the Environmental Assessment Office will notify the proponent and request the proponent to supply any additional copies that may be required for the purposes of the assessment.[16]

[13] Sections 8, 16(1) and 16(2) of the Act.
[14] Section 11 of the Act.
[15] Section 16(3) and 24(1)(a) of the Act; Section 2 of the Prescribed Time Limits Regulation.
[16] Section 16(4) of the Act.

If the proponent does not submit the application within three years after terms of reference for the application have been finalized, the assessment may be suspended or terminated.[17]

5.1.6 Step 6: Reviewing the Application

Key Question: Does the application adequately document the potential effects of the project and how any potential adverse effects could be avoided or mitigated?

The review of the application normally begins on the date the Environmental Assessment Office receives the required additional copies from the proponent. If no additional copies of the application are required, the review of the application begins on the date that the Environmental Assessment Office notifies the proponent of the acceptance of the application for review. The Environmental Assessment Office conducts the review in accordance with the procedures established in the procedural order, or in any variation to that order.[18] Application review normally includes: review by government agencies, First Nations and the public; First Nation and public consultation; a formal public comment period; and opportunities for the proponent to respond to issues raised.

Government has up to 180 days (approximately six months) from the date the review of the application commences to complete the review, prepare the assessment report and refer the application to the ministers for a decision on issuance of an environmental assessment certificate (Step 7).[19] The time required will depend on the complexity of the project and the issues raised. Government agency, First Nation and public review of the application, any formal public comment period, and opportunities for the proponent to respond to issues raised, are normally scheduled within the 180 days.

The Environmental Assessment Office may suspend the 180 day period:

- if the review is delayed at the request of the proponent (e.g., if the proponent requires more time to respond to issues than is provided for in the procedural order);
- because of actions taken or not taken by the proponent (e.g., if the proponent has not completed required consultations); or
- if the proponent is required to provide additional information.[20]

When the proponent is required to provide additional information, the 180 day period will normally be suspended only if the required information is substantial enough that the assessment cannot effectively proceed until the information is submitted. If additional information is required on a particular issue, but the assessment can still effectively proceed on all other aspects of the review, the review period would not normally be suspended.

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[17] Section 24(3) of the Act; Section 5(a) of the Prescribed Time Limits Regulation.
[18] Section 16(5) of the Act.
[19] Section 24(1)(b) of the Act; Section 3 of the Prescribed Time Limits Regulation.
[20] Section 24(2) of the Act.

The maximum time that the review of the application may be suspended is three years from the date of suspension, unless a different suspension period is provided for in the procedural order. If the review of the application is suspended on more than one occasion, the total time of all suspensions may not exceed three years, unless a different suspension period is provided for in the procedural order.[21]

The time limit for review of the application may also be extended beyond 180 days if required to complete an effective assessment.[22] For example, if a significant supplement or addendum to the application is submitted, the review period may be extended to allow for an extended or additional public comment period.

If the proponent is requested by the Environmental Assessment Office to submit additional information in relation to the application during the course of the assessment, the proponent must provide that information within three years of the date of the request.[23]

5.1.7 Step 7: Preparing the Assessment Report and Referring the Application to Ministers

Key Question: What are the findings of the assessment?

At the end of the application review, and within the 180 day time limit, the Environmental Assessment Office prepares an assessment report, which documents the findings of the environmental assessment, including the issues raised in relation to the project and how these issues have been or could be addressed.[24] The Environmental Assessment Office may also prepare recommendations to the ministers and reasons for the recommendations.[25]

The assessment report and application are referred to three ministers: the Minister of Sustainable Resource Management; the Minister of Water, Land and Air Protection; and the minister designated as responsible for that category of reviewable project.[26] A list of responsible ministers is provided in Appendix 6. For some water management projects and waste disposal projects, the Minister of Water, Lands and Air Protection is the responsible minister. In those cases, the referral would be made to only two ministers.

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[21] Section 6 of the Prescribed Time Limits Regulation.
[22] Section 24(4) of the Act.
[23] Section 24(3) of the Act; Section 5(a) of the Prescribed Time Limits Regulation.
[24] Section 17(2)(a) of the Act.
[25] Sections 17(2)(b) and 17(2)(c) of the Act
[26] Section 17(1) of the Act. The responsible minister for each project category is established by Order in Council (see Appendix 7).

5.1.8 Step 8: Deciding to Issue/Not Issue an Environmental Assessment Certificate

Key Question: Should an environmental assessment certificate be issued for this project?

After referral of the application and assessment report, ministers have 45 days to decide whether or not to issue an environmental assessment certificate, or whether to require further assessment.[27] In making this decision, the ministers consider the information provided by the Environmental Assessment Office and any other matters they consider relevant.[28] The ministers must also consider whether the Province has fulfilled its legal obligations to First Nations.

If ministers decide to grant an environmental assessment certificate for the project, the Environmental Assessment Office delivers the decision and the certificate to the proponent[29], notifies government agencies and First Nations involved in the review, and makes the decision and certificate available through the Project Information Centre website. The certificate usually contains project-specific conditions that the proponent must adhere to in proceeding with the project. Further information on post-certification requirements and activities is provided in Section 5.4. The certificate must specify a deadline, between three and five years after the date the certificate is issued, by which the project must be substantially started.[30]

5.2 THE PROCEDURAL ORDER AND TERMS OF REFERENCE FOR AN APPLICATION

This section builds on the information in Sections 5.1.3 (Step 3) and 5.1.4 (Step 4), providing more detail on the main elements that may be included in a procedural order, and on the terms of reference for an application.

In general, when matters related to the environmental assessment can be specified at the time the procedural order is issued, they will be included in the original order. However, because the procedural order is issued at the early stage of the assessment, in most cases there will not yet be sufficient information available to specify all the assessment requirements. Therefore, the procedural order is more likely to set out procedures, including an issue identification and scoping process, to determine the potential effects to be assessed, the information to be provided by the proponent in the application, and consultation requirements. The issue identification and scoping process will enable the development of terms of reference for the application, which will contain the detailed information and consultation requirements that the proponent must satisfy in its application.

[27] Sections 17(3)(c) and 24(1)(c) of the Act, Section 4 of the Prescribed Time Limits Regulation
[28] Sections 17(3)(a) and 17(3)(b) of the Act
[29] Section 17(4) of the Act.
[30] Section 18(1) of the Act.

The issue identification and scoping process will involve the Environmental Assessment Office and the proponent, in consultation with government agencies, First Nations, the public and other parties as appropriate, and will typically include some assessment of baseline conditions. Consultation with First Nations and the public may contribute to determining the need for baseline studies. In most cases, the proponent prepares draft terms of reference. The Environmental Assessment Office then coordinates a review of the draft, which may include a formal public comment period in some cases. Following review of the draft, the proponent makes revisions as required. The final terms of reference must be approved by the Environmental Assessment Office.

It is possible that, despite best efforts, potential effects and information requirements are identified after the terms of reference for the application have been approved. This could be before or after the application has been submitted. If necessary, the procedural order could be varied or terms of reference amended to ensure that the assessment of effects is complete.[31]

Project Scope

The project scope refers to the physical facilities and activities that comprise the project for purposes of the assessment. This usually includes all dedicated on-site and off-site facilities needed for the project to function, as well as the activities associated with operating those facilities.

The project scope also identifies which of the project's development phases – construction, operations, modification, dismantling and abandonment – are to be included in the assessment. For most projects this is specified in the Reviewable Projects Regulation. In general, all phases are included for projects with a definite life expectancy (e.g., mines), whereas for projects with an indeterminate life expectancy (e.g., pipelines), the assessment does not normally include dismantling and abandonment.

Usually, the project scope is determined early and specified in the procedural order. In that case, if the proponent later modifies the project, it may be necessary to vary the original order to revise the scope of project. However, if project alternatives are still under consideration, the procedural order would not specify the project scope, but might address the procedure to be used to select the preferred alternative. In this case, the terms of reference for the application would include the requirement to report on the procedure used for selection of the preferred alternative.

Consultation

The procedural order may identify some of the persons or organizations to be consulted during the assessment. However, it is not usually possible to identify all the parties who will need to be consulted at the time the procedural order is issued. Consequently, the order may stipulate known parties, but in most cases will provide for the proponent and the Environmental Assessment Office to identify the parties to be consulted as the assessment proceeds. Parties to be consulted may include the general public, stakeholder groups, First Nations, government agencies or neighbouring jurisdictions.

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[31] Section 13 of the Act

The procedural order usually contains provisions related to notifying parties about key steps in the assessment, access to information, opportunities to be consulted and opportunities to comment. The order may set out some of these provisions, while providing for other matters to be negotiated as the assessment progresses.

Comment periods, during which review participants may submit comments on the project and on key documentation, are established in the procedural order to ensure all parties have a guaranteed opportunity to express their views during the course of the assessment. There will usually be at least one formal public comment period of between 30 and 75 days during the course of an assessment.[32] This comment period is usually held during the review of the proponent's application (Step 6). An additional public comment period is also held, usually on the draft terms of reference, unless the Environmental Assessment Office is satisfied that an additional comment period is either impracticable or unnecessary.[33] The duration of this and any additional public comment periods is established on a case-by-case basis. Further information on public consultation during an environmental assessment and the Public Consultation Policy Regulation is provided in Section 5.3.

Time Limits

The procedural order may stipulate time limits for activities in the assessment that are not otherwise covered by legislated time limits. Time limits may be set to provide greater certainty for review parties with respect to review duration. Examples of the use of time limits include establishing the length of public comment periods and the time within which the proponent may respond to comments submitted on the application.

Information from Sources Other than the Proponent

While most information required for the assessment is provided by the proponent, primarily in the application, in some cases information may also be required from other sources. Such input is most likely to be sought during the later stages of an assessment, once the review of the application is underway, and is therefore unlikely to be included in the procedural order or terms of reference. For example, the Environmental Assessment Office may retain independent technical consultants or mediators to provide advice on specific issues. However, if it were to be known at an early stage that information would be required from sources other than the proponent, this could be addressed in the procedural order or terms of reference.

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[32] Section 7(1) of the Public Consultation Policy Regulation

[33] Section 7(2) of the Public Consultation Regulation

Class Assessments

The *Environmental Assessment Act* provides for the use of partial or full class assessments to address the potential adverse effects of specified categories of reviewable projects.[34] Partial class assessments would cover certain specified effects and could replace the need for a proponent to provide, in its application, information on these effects. Full class assessments would cover all significant potential effects, and could replace all environmental assessment and certification requirements.

At the time this Guide was published, no class assessments had been established. However, should any partial class assessments be established in the future, the role of a partial class assessment in fulfilling the information requirements for the environmental assessment may be set out in the procedural order.[35] If a full class assessment applied, the project would not be the subject of a procedural order, as all assessment requirements would be specified in the provisions of the full class assessment.

Coordination with the *Canadian Environmental Assessment Act*

When a project is subject to the British Columbia *Environmental Assessment Act* and the *Canadian Environmental Assessment Act*, the Environmental Assessment Office works closely with the Canadian Environmental Assessment Agency and other federal agencies to ensure the legislated environmental assessment requirements of both levels of government are met and integrated through a coordinated process. In accordance with the 2002 interim extension to the bilateral agreement on environmental assessment cooperation (see Section 3.2), the two levels of government will develop a project-specific workplan that sets out the process, information requirements and analysis necessary to meet the requirements of each party. Both governments will work with the proponent during development of the terms of reference and preparation of the application, and federal agencies will provide input to the assessment report, to ensure both federal and provincial reporting requirements are fulfilled.

The procedural order establishes how the assessment process will be conducted and addresses such matters as project scope, consultation requirements, time limits, and information requirements.

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[34] Section 20 of the Act.

[35] Section 11(2)(d) of the Act.

5.3 PUBLIC CONSULTATION

5.3.1 General

Environmental assessment is a balanced and open process, which includes participation by all interested members of the public, including individuals, community organizations, and special interest groups (e.g., business, environmental, outdoor recreation, trade, residents' and women's groups). While there are separate obligations related to First Nation consultation (see Section 3.3), aboriginal people may also participate as part of the broader public. Public consultation during an environmental assessment contributes to the gathering and sharing of all relevant information related to the potential effects of a proposed project. This may include not only environmental effects, but also economic, social, heritage and health effects, where these arise.

Emphasis is placed on beginning consultations early. Proponents are encouraged to identify potentially affected members of the public and undertake consultation activities as early as possible to facilitate effective issue identification. This leads to more complete issue identification at an early enough stage to influence project planning decisions, before irreversible project location or design decisions are made. General information on consultation methods that may be used during an environmental assessment is provided in Appendix 3.

Environmental assessment is a balanced and open process that encourages early involvement by interested members of the public to help identify all the relevant issues.

The *Environmental Assessment Act* includes provisions for public notification, access to information and consultation. The Public Consultation Policy Regulation (see Section 5.3.2) sets out general policies with respect to public consultation that the Environmental Assessment Office must take into account when determining the consultation requirements for an environmental assessment. Additional consultation requirements and opportunities for participation are determined on a project-by-project basis, to best suit the characteristics of the project and the communities and interests, which may be affected.

In general, each assessment includes:

- information sharing: providing information to the public on the project, the assessment process, the consultation process, and the requirements placed on the proponent;
- notification: providing public notice about key steps in an assessment, such as when an application is accepted for review;
- participation and consultation: providing opportunities for the public to identify interests and potential impacts related to the project, and to submit comments;
- issue resolution: ensuring public issues that are relevant to the assessment are addressed, which may include opportunities for the public to participate in issue resolution; and

- reporting of public issues: ensuring any reports on public consultation activities, as well as comments submitted by the public, are taken into consideration in preparing the assessment report and in developing any recommendations.

At the end of each assessment, public issues are reported on, so they can be taken into consideration by ministers in making their decision on whether or not to certify the project.

Environmental assessments include public notice, access to information, public consultation, public comment periods, and consideration of and reporting on public issues.

5.3.2 Public Consultation Policy Regulation

The Public Consultation Policy Regulation sets out general policies with respect to public consultation that must be taken into account in every assessment that is led and managed by the Environmental Assessment Office.[36] A copy of the regulation is provided in Appendix 5. Policies set out in the regulation include that:

- the proponent is required to conduct a public consultation program that is acceptable to the Environmental Assessment Office[37];
- the proponent is required to present, in its application for an environmental assessment certificate, a report on consultation activities undertaken in relation to the project, and a proposed consultation plan to be carried out during review of the application[38];
- within the 30 day period during which the Environmental Assessment Office determines whether the proponent's application can be accepted for review, the Environmental Assessment Office is to make a written assessment of the adequacy of any public consultation measures the proponent has undertaken or proposed in relation to its application[39];
- the Environmental Assessment Office's assessment of the proponent's public consultation program is to specify any further public consultation activities considered necessary to ensure adequate public consultation, whether those activities are to be carried out by the proponent or the Environmental Assessment Office, and a time limit within which the additional activities are to be carried out[40];

[36] Refers to environmental assessments led and managed by the Environmental Assessment Office under section 10(1)(c) of the Act.

[37] Section 4(1)(a) of the Public Consultation Policy Regulation.

[38] Section 4(1)(b) of the Public Consultation Policy Regulation.

[39] Sections 4(2) of the Public Consultation Policy Regulation.

[40] Section 4(3) of the Public Consultation Policy Regulation.

- public notice is given, by means of newspaper advertisements, open letters or other methods satisfactory to the Environmental Assessment Office, concerning the availability of the proponent's application for review, the duration and purpose of any formal public comment periods, and any open house or public meeting being held in relation to the assessment[41] (the notice is given at least seven days before the start of a formal comment period or before an open house or public meeting[42]);
- the Project Information Centre is required to provide public access to specified documentation related to the assessment[43] (further information about the Project Information Centre and the documentation that is made available to the public is provided in Section 7); and
- there is at least one formal public comment period during the assessment of between 30 and 75 days[44], and at least one additional public comment period unless the Environmental Assessment Office is satisfied that it would be either impracticable or unnecessary.[45]

The Public Consultation Policy Regulation sets out general policies related to such matters as the proponent's consultation program, public notice about the assessment, public comment periods, and documents to be available through the Project Information Centre.

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[41] Section 5(1) and 5(2) of the Public Consultation Policy Regulation.
[42] Section 5(3) of the Public Consultation Policy Regulation
[43] Section 6 of the Public Consultation Policy Regulation.
[44] Section 7(1) of the Public Consultation Policy Regulation.
[45] Section 7(2) of the Public Consultation Policy Regulation

5.4 POST-CERTIFICATION

5.4.1 Transition to Post-Certification

The environmental assessment focuses on those issues that are relevant to whether or not a project should be certified by ministers ("strategic issues"). Other issues raised during the assessment which will require attention before the project can proceed, but not at this level of decision-making, are addressed during the post-certification stage. Post-certification issues may be addressed either through regulatory permitting procedures or, if non-statutory in nature, by other means that may be established in conditions of the environmental assessment certificate.

During an environmental assessment, procedures are put in place to ensure there is a smooth transition to post-certification permitting and other follow-up activities. For example, a lead ministry may assume responsibility to act as the primary point of contact for the proponent, and for coordinating permitting activities.

5.4.2 Concurrent Approval

A proponent may request that some applications for provincial approvals be processed concurrently with the environmental assessment review.[46] Provisions related to concurrent approval are set out in the Concurrent Approval Regulation (see Appendix 5 for a copy of the regulation). With concurrent approval, applications for statutory authorizations such as licenses, permits and certificates are reviewed while the environmental assessment process is ongoing. However, no authorizations may be issued until the assessment is completed and an environmental assessment certificate is issued.[47]

To be eligible for concurrent review, the approval must be required to construct, operate, modify, dismantle, abandon or otherwise undertake part or all of the reviewable project that is the subject of the environmental assessment.[48] Any such authorization is eligible for concurrent review except a Certificate of Public Convenience and Necessity (CPCN) under the *Utilities Commission Act*.[49]

[46] Section 23(1) of the Act.
[47] Section 9 of the Act.
[48] Sections 1 and 3 of the Concurrent Approval Regulation.
[49] Section 3(2)(a) of the Concurrent Approval Regulation.

The Environmental Assessment Office may specify in the procedural order, or in any variation to the order, the deadline by which the proponent must apply for concurrent review.[50] If no other earlier deadline is so specified, the proponent must apply for concurrent review of approvals no later than either:

- seven days after the date on which the Environmental Assessment Office notified the proponent of acceptance of the application for an environmental assessment certificate, if no additional copies of the accepted application were required;[51] or
- if additional copies of the accepted application for an environmental assessment certificate were required, the date on which the Environmental Assessment Office receives those copies.[52]

When the concurrent approval provisions apply, the responsible regulatory authority reviews the approval application expeditiously, and must notify the proponent and the Environmental Assessment Office in writing, to the extent practicable at that stage of review, of any additional information requirements. The responsible regulatory authority must provide such notice within 75 days of the date that the Environmental Assessment Office notified the proponent of acceptance of the application for an environmental assessment certificate.[53]

If an environmental assessment certificate is issued, the regulatory authority must, within 60 days after issuance of the certificate, either:

- issue the approval;
- refuse to issue the approval, indicating the reasons for the refusal; or
- specify a later date on which the proponent may expect a decision, indicating the reasons for the postponement.[54]

Regulatory authorities responsible for issuing the approvals will be involved in the environmental assessment. Therefore, if there is doubt about whether or not an approval will be issued, that information would be included in the assessment report and taken into consideration in the ministers' decision.

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[50] Section 5(a) of the Concurrent Approval Regulation

[51] Section 5(b) of the Concurrent Approval Regulation

[52] Section 5(c) of the Concurrent Approval Regulation In deciding whether or not to issue an approval, the regulatory agency must also consider the Province's legal obligations to First Nations, including the duty to consult.

[53] Section 8(1) of the Concurrent Approval Regulation

[54] Section 8(3) of the Concurrent Approval Regulation

Proponents have the option of requesting that other provincial approvals (such as permits or licenses) required for the project be reviewed concurrently with the environmental assessment. This can result in more timely issuance of those approvals.

5.4.3 Post-Certification Consultation

Once an environmental assessment certificate is issued, the environmental assessment process is concluded. However, post-certification consultation may be included as a condition of an environmental assessment certificate, and the proponent may be required to report on the results of those consultations. Further consultation may also be required in relation to post-certification approvals.

Provincial agencies responsible for post-certification approvals review the information collected and consultation during the environmental assessment to determine whether the environmental assessment process fully addressed the consultation requirements. Agencies may decide there is no need for proponents to undertake further consultation, or that additional consultation is required on specific issues related to that approval. Some level of notification or consultation may be required under the approval statute, regardless of consultation that occurred during the environmental assessment.

The Environmental Assessment Office encourages proponents to maintain the contacts established during the environmental assessment, in order to keep First Nations, local residents and other concerned citizens apprised of project activities. A post-certification liaison committee may be established to ensure that the transition from planning to construction and project implementation is managed effectively. Such a committee could also provide a forum to ensure that ongoing community and First Nation interests are considered as the project proceeds.

5.4.4 Monitoring, Evaluation and Reporting

The environmental assessment certificate may contain requirements for:

- monitoring the effects of the project;
- comparing the anticipated effects of the project, as set out in the application, with the actual effects;
- evaluating the adequacy of the measures taken to prevent or mitigate any adverse effects; and
- periodically reporting the results of the above activities to the Environmental Assessment Office or another agency.

Monitoring plans may specify the key parameters that need to be monitored, sampling requirements (e.g., frequency) and analytical procedures. Impact management procedures and/or contingency plans to respond to issues and unforeseen impacts during the construction or operational phases may also form part of the monitoring plan. Appropriate arrangements for liaison between the proponent, contractors, government, First Nations and the public may be a necessary part of monitoring programs.

Evaluation generally involves assessing the project's compliance with the certification terms and conditions. It may also include evaluating the actual effectiveness of approved mitigation measures through a monitoring program. This may involve field inspection and appraisal by the appropriate regulatory authorities, and adjusting the mitigation requirements to more effectively manage impacts.

Project certification may include ongoing requirements for First Nation and public consultation, and for ongoing monitoring and reporting on project effects.

5.4.5 Compliance and Enforcement

Regulatory agencies have several options available to ensure project compliance. In addition to agency requirements, the *Environmental Assessment Act* prohibits:

- developing a reviewable project without an environmental assessment certificate[55];
- providing information that is false or misleading[56]; and
- developing projects contrary to the terms of the environmental assessment certificate.[57]

Sanctions and penalties for these prohibited activities include fines of up to $200,000 and imprisonment for up to 12 months.[58]

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[55] Section 8(1) of the Act.
[56] Section 41(2)(c) of the Act.
[57] Sections 8(2) and 34 of the Act.
[58] Section 43 of the Act.

6. SPECIAL CIRCUMSTANCES

6.1 WHEN AN ENVIRONMENTAL ASSESSMENT MAY NOT BE REQUIRED

As explained in Section 5.1.1, there are three situations in which a project may be considered reviewable under the *Environmental Assessment Act*:

1) it falls within a category of project that is included in the Reviewable Projects Regulation and meets or exceeds the prescribed thresholds;
2) the Minister of Sustainable Resource Management (the minister) designates it as reviewable; or
3) at the request of the proponent, the Environmental Assessment Office designates it as reviewable.

If the project has been designated reviewable by the minister (situation #2), or if it has been designated reviewable by the Environmental Assessment Office following a request from the proponent (situation #3), an environmental assessment will always be required.

When the project is reviewable because it is included in the Reviewable Projects Regulation (situation #1), an environmental assessment will be required in nearly all cases. However, the Environmental Assessment Office has the option to waive a project out of the process without undertaking an environmental assessment under the Act, if the Environmental Assessment Office is satisfied that the project will not result in any significant adverse effects, when practical impact management measures are taken into account.[59] In such cases, the requirement to obtain an environmental assessment certificate would be waived.

The Environmental Assessment Office considers the waiver option only in rare cases where it can readily be determined, without the need for detailed analysis and/or further study or information gathering, that the potential for significant adverse effects is minimal, taking into consideration best management practices or readily available mitigation options. The waiver power is not considered an option for most reviewable projects for the following two reasons.

1) The test in the legislation is strict — to issue a waiver order, the Environmental Assessment Office must be satisfied that there is no potential for significant adverse effects, taking into account available mitigation measures.

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[59] Section 10(1)(b) of the Act.

2) The Reviewable Projects Regulation differs little from the regulation of the same name under the previous *Environmental Assessment Act*. That regulation was refined through a series of amendments after it was first enacted on June 30, 1995. As a result, there is a high degree of confidence that it includes only those projects that have some potential for significant adverse effects, and that warrant an environmental assessment.

The limited circumstances in which a waiver could be considered include the following.

1) **The primary purpose of the project is to implement a required impact management strategy, either as a new undertaking or as a change to an existing project. This situation is most likely to occur when a project has been assessed under another credible environmental assessment process, such as under the *Canadian Environmental Assessment Act*, and that process requires a mitigation measure which takes the form of a project or activity that is reviewable under the provincial *Environmental Assessment Act* (e.g., construction of additional water storage at a dam to assure minimum flows for fish). If the other environmental assessment process included an assessment of the potential adverse effects associated with the mitigation measure, the Environmental Assessment Office may have a high degree of confidence that the mitigation measure will have no significant adverse effects. Based on past experience, this situation should arise only infrequently.**

2) **The project is a relatively minor change to a "grand-parented" project. A grand-parented project is one which, although reviewable in size based on the criteria set out in the Reviewable Projects Regulation, is exempted from the application of the *Environmental Assessment Act* because either it was "substantially started" on the date the Act came into effect, or it had been reviewed in detail and granted one or more key approvals before that date.[60] It is possible that any new issues raised by minor amendments to a grand-parented project could be addressed satisfactorily by the same mitigation measures already being applied to the existing project, and that no additional environmental assessment is required to establish this. Based on past experience, this situation should arise only infrequently.**

3) **The project is of a type where management practices to address the primary impact concerns have been codified or standardized in regulations or rules of practice. It is unlikely that the types of major projects which are covered by the Reviewable Projects Regulation would be amenable to a management regime that could be completely codified. In a typical situation, the issues raised by larger-scale projects include site-specific issues, which require local assessment and project-specific impact management measures. Even if some aspects of a project could be managed using standardized rules of practice, there will typically be other strategic-level issues, which do not lend themselves to this approach, and would therefore require an environmental assessment.**

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[60] Section 51(1) and 51(2) of the Act; Transition Regulation

If the Environmental Assessment Office waives a project out of the environmental assessment process, the waiver order may include conditions. For example, the proponent may be required to undertake specified consultation measures before proceeding with the project, or to provide specified information which would not otherwise be covered by regulatory requirements (e.g., regarding wildlife impacts) to a government agency.

In rare circumstances, the Environmental Assessment Office may waive the requirement for an environmental assessment when it can be readily determined that the potential for significant adverse effects is minimal, taking into account practical impact management measures.

6.2 MINISTER DETERMINES THE ASSESSMENT PROCESS

As noted in Section 5.1.2 (Step 2), in special circumstances the Environmental Assessment Office may refer a reviewable project to the Minister of Sustainable Resource Management to determine how the assessment will be conducted, including the scope of the assessment and the procedures and methods to be used.[61] Examples of this may occur are when:

- an alternative forum for conducting the assessment, such as an independent commission of inquiry or quasi-judicial hearing panel, may be more appropriate than the normal Environmental Assessment Office-led process; or
- it would facilitate coordination and harmonization with the assessment procedures of another level of government (e.g., if the federal government were conducting a panel hearing under the *Canadian Environmental Assessment Act*).

The minister may appoint a commission, hearing panel, or any other person or body (including the Environmental Assessment Office) to conduct the environmental assessment.[62] The minister may confer certain powers and protections on a commission or hearing panel, as set out in British Columbia's *Inquiry Act*, such as the power to summon witnesses.[63] The minister may set the assessment scope, procedures and methods to be used, or may delegate some or all of this responsibility to the party assigned to conduct the assessment.[64]

[61] Sections 10(1)(a) and 14 of the Act.
[62] Section 14(3)(a) of the Act.
[63] Section 14(4) of the Act.
[64] Sections 14(1) and 14(3)(b) of the Act.

Because the minister has broad discretion to determine how an assessment is conducted, there is no typical process. Each assessment will be designed to meet the exceptional circumstances identified by the Environmental Assessment Office in referring the project to the minister. Therefore, additional information on how the assessment will be conducted in this situation is not included in this Guide. However, as in a typical assessment described in Section 5.1, on completion of the assessment, the commission, hearing panel or other party that has conducted the assessment prepares an assessment report. The assessment report, along with the application and any recommendation and reasons, is referred to the Minister of Sustainable Resource Management, the Minister of Water, Land and Air Protection and the responsible minister for a decision.[65] The ministers have 45 days to decide whether or not to issue an environmental assessment certificate.[66]

In some situations, the Environmental Assessment Office may refer a project to the Minister of Sustainable Resource Management to determine how the assessment will be carried out. As appropriate, the minister may appoint a commission, hearing panel, or other person or body to conduct the assessment, depending on the circumstances.

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[65] Sections 17(1) and 17(2) of the Act.

[66] Sections 17(3) and 24(1)(c) of the Act; Section 4 of the Prescribed Time Limits Regulation.

7. ACCESS TO INFORMATION: THE PROJECT INFORMATION CENTRE

The *Environmental Assessment Act* establishes a Project Information Centre to facilitate access to general information about the environmental assessment process, as well as specific information on individual project assessments.[67] The principal means of accessing the Project Information Centre is through the website (www.eao.gov.bc.ca). When a project is located in a region where Internet access is not adequate, hard (paper) copies of select documents may be housed in local public facilities, such as libraries or government agents' offices.

The Public Consultation Policy Regulation identifies documentation related to each environmental assessment that should normally be made available to the public.[68] This documentation includes:

- the information that is required in the proponent's application for an environmental assessment certificate (the terms of reference);
- the proponent's application and any supplementary information in final form submitted by the proponent;
- any public notices given during the environmental assessment;
- any orders issued by the Environmental Assessment Office or the Minister of Sustainable Resource Management;
- the assessment by the Environmental Assessment Office of the proponent's consultation program;
- comments received during a formal public comment period on the proponent's application, or on other information submitted by the proponent;
- proponent responses to comments received during a formal public comment period on the application, or on other information submitted by the proponent;
- the assessment report and any recommendations and reasons;
- the ministers' decision on issuing the environmental assessment certificate;
- the environmental assessment certificate; and
- documentation submitted to the Environmental Assessment Office by proponents in accordance with certification requirements to report on the status of compliance with certificate conditions.

[67] Section 25 of the Act.

[68] Section 6(1) of the Public Consultation Policy Regulation

The assessment report and any recommendations and reasons are expected to be made available to the public within 45 days of the referral to ministers for a decision on issuance of a project approval certificate.[69] All other documentation is expected to be made available within seven days of receipt by the Environmental Assessment Office.[70]

Information on the Project Information Centre website is updated on an ongoing basis. All parties with an interest in an environmental assessment are encouraged to visit the Project Information Centre website regularly to keep up to date on new information as it becomes available. Information on how to contact the Project Information Centre is provided below.

Project Information Centre
Website: www.eao.gov.bc.ca
E-mail: eaoinfo@gems5.gov.bc.ca
Phone: (250) 356-7441 (Victoria)
Toll-free calls through Enquiry BC at 1-800-663-7867 or
(604) 660-2421 (Vancouver)
Fax: (250) 356-7440

The Project Information Centre website contains extensive information on environmental assessments. Visit the website regularly to keep up to date on new information.

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[69] Section 6(2)(a) of the Public Consultation Policy Regulation.

[70] Section 6(2)(b) of the Public Consultation Policy Regulation.

APPENDIX 1: GLOSSARY OF TERMS

Act: British Columbia's *Environmental Assessment Act*, S.B.C. 2002, c. 43.

application: an application for an environmental assessment certificate that is filed by a project proponent.[71]

assessment report: a report prepared on completion of an environmental assessment which summarizes the procedures followed during, and the findings of, an assessment, and which is submitted to ministers.[72] The assessment report is prepared by the party that conducted the assessment which may be the Environmental Assessment Office, a commission, a hearing panel or other person or body appointed by the minister.

baseline studies: information on relevant pre-existing environmental, economic, social, heritage and/or health conditions at the site of, or in the area surrounding, a proposed project, to enable a determination of actual project effects through comparisons before and after development.

class assessment: assessment of a specified category of reviewable project conducted in accordance with prescribed procedures approved by the Executive Director of the Environmental Assessment Office.[73] The assessment may be of specified potential adverse environmental, economic, heritage or health effects (partial class assessment), or all potential significant adverse environmental, economic, heritage or health effects (full class assessment).

environmental assessment: a project planning tool and information-gathering process which measures the potential impacts of proposed projects and identifies ways to avoid, mitigate or compensate for potential impacts. The term "environmental assessment" is often used interchangeably with other similar terms such as "environmental impact assessment" and/or "project assessment".

Environmental Assessment Office: the provincial body that is responsible for administration of the *Environmental Assessment Act* and regulations.[74]

environmental assessment certificate: a certificate issued by ministers at the conclusion of an environmental assessment, representing an approval-in-principle level of endorsement by the Province, and allowing a proponent to obtain any other statutory authorizations necessary to carry out the reviewable project.[75]

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[71] Sections 16(1) and 16(2) of the Act
[72] Section 17(2)(a) of the Act.
[73] Section 20 of the Act.
[74] Section 2 of the Act.
[75] Section 17(3)(c)(i) of the Act

Executive Director: the government official appointed to head the Environmental Assessment Office and to oversee all aspects of its operations.[76]

grandparented project: a project which, although reviewable in size based on the criteria set out in the Reviewable Projects Regulation, is exempted from the application of the *Environmental Assessment Act* because either it was "substantially started" on the date the Act came into effect, or it had been reviewed in detail and granted one or more key approvals before the Act came into force.

issue: an identified concern or other matter related to the potential effects of a proposed project, or related to the environmental assessment process.

issue tracking document: a document prepared by the Environmental Assessment Office to keep track of issues raised during an environmental assessment and how they are being/will be addressed.

mitigation: measures implemented to control, reduce or eliminate a potential adverse impact of a project, including restorative measures.

minister: the Minister of Sustainable Resource Management.

ministers: the Minister of Sustainable Resource Management, the Minister of Water, Land and Air Protection and the responsible minister.[77]

post-certification issue: an issue which is addressed following issuance of an environmental assessment certificate, either through review of a permit or other approval application or, if non-statutory in nature, by other means which may be specified in the certificate.

procedural order: an order issued by the Environmental Assessment Office, the minister, a commission member, a hearing panel or another person appointed by the minister to conduct an environmental assessment, which establishes the scope of the environmental assessment and the methods and procedures to be used.[78]

proponent: any person or organization proposing to undertake a reviewable project in British Columbia, including the government of Canada, the government of British Columbia, a First Nation, a company, a municipality, a regional district, another province or another jurisdiction.[79]

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[76] Section 3 of the Act.
[77] Section 1 of the Act.
[78] Section 11(1) and 14(1) of the Act
[79] Section 1 of the Act.

responsible minister: the minister designated by Cabinet to share decision-making authority with the Minister of Sustainable Resource Management and the Minister of Water, Land and Air Protection with respect to whether or not to grant an environmental assessment certificate.[80] The responsible minister is usually the minister with key programming or regulatory responsibility for the project sector within which a reviewable project falls.

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[80] Section 1 of the Act.

APPENDIX 2: PROVINCIAL POLICY FOR CONSULTATION WITH FIRST NATIONS (2002): PRINCIPLES AND STAGES OF CONSULTATION

CONSULTATION PRINCIPLES

While the nature and scope of consultation may vary, the fundamental principles of consultation are the same for all aboriginal interests contemplated by the Provincial Consultation Policy (2002). Consultation efforts should be made diligently and meaningfully, and with the intention of fully considering aboriginal interests. Where a sound claim of aboriginal rights and/or title is made out, consultation efforts must attempt to address and/or accommodate a First Nation's concerns relating to the impact of proposed activities on the aboriginal interests that it identifies or of which the Crown is otherwise aware. In practical terms, this means the quality of consultation is of primary importance, and the soundness of the claim will dictate the scope and depth of required consultation.

The following principles set out in the policy apply to all consultation efforts, and should be followed throughout the entire process of consultation:

- the onus to prove aboriginal rights or title lies with the First Nation claiming the existence of those rights or title;
- through consultation, the Province must consider aboriginal interests prior to making land or resource decisions concerning Crown land activities that are likely to affect those interests and attempt to address and/or accommodate concerns that are raised, provided that those concerns relate directly to aboriginal interests that are sound and to impacts of Crown decisions on those interests;
- consultation should be carried out as early as possible in the decision-making process;
- the Crown must ensure the adequacy of any consultation activities it undertakes or that are undertaken on its behalf;
- decision-makers should take steps to ensure consultation activities involve representatives from all potentially affected First Nations;
- consultation processes need to be effective and timely, carried out in good faith, and, wherever possible, meet applicable legislative timelines;
- the consultation process should inform decision-makers of the possibility that the decision(s) that they make on proposed activities may result in an infringement of aboriginal interests. The question of whether infringement appears likely and whether efforts to attempt to address and/or reach workable accommodations of aboriginal interests are likely to be adequate to justify any such infringement, should be considered by decision makers;
- consultation on activities that involve a number of agencies should be integrated wherever possible to ensure maximum clarity and efficiency;
- consultation processes should be clearly defined to the First Nations in question;

- consultation processes should illustrate how information provided by a First Nation is or is to be considered in decision making processes and planning;
- consultation processes can be carried out in a variety of ways, depending on the circumstances and nature of the proposed activity. Methods for meaningful consultation should be selected in relation to the nature of the proposed activity, the requests of the First Nation in question (where those are reasonable), the soundness of the aboriginal interests that are at issue, and other relevant factors; and
- the consultation process will inform the First Nation(s) in question of the potential effect of a proposed activity. Information should be provided in a manageable and understandable format, with adequate time for review, wherever possible within the context of time limits imposed for the making of statutory decisions.
- all letters, meetings, telephone calls, site visits, and other efforts by the Crown to obtain information about aboriginal interests prior to making land and resource use decisions, are elements of the consultation process and records of them should be kept.

STAGES OF CONSULTATION

The following is a summary of the stages of consultation described in the Provincial Consultation Policy (2002).

1) **conduct pre-consultation assessment:** Clearly define the First Nations in question and ensure consultation involves all potentially affected First Nations.

2) **initiate consultation:** Identify and assess soundness of aboriginal interests.

3) **consider the impact of the decision on aboriginal interests:** Decision-makers must consider the possibility that the decision(s) may result in an infringement of aboriginal interests.

4) **consider whether any likely infringement of aboriginal interests could be justified:** Aboriginal interests may be proven subsequently to be existing aboriginal rights and/or title. Therefore, where there is a sound claim to aboriginal rights or title, consultation should inform decision-makers of the likelihood of infringement, efforts made to address issues and/or reach workable accommodations, and any justification for infringement.

5) **look for opportunities to address and/or reach workable accommodations of aboriginal interests and/or negotiate resolution:** In doing this, agencies will consider the potential for setting precedents that may impact other provincial ministries or agencies.

For more information please consult the Supplementary Guide to First Nations.

APPENDIX 3: GENERAL INFORMATION ON CONSULTATION METHODS

This appendix provides general information on some consultation methods that may be used during an environmental assessment. The methods are divided into two general categories: methods for information dissemination and methods for direct consultation.

METHODS FOR INFORMATION DISTRIBUTION

Publications

The proponent or the Environmental Assessment Office may produce publications about a project undergoing assessment, the environmental assessment process for the project, or the environmental assessment process in general. Publications may range from lengthy documents on specific aspects of a project, to general information brochures, fact sheets or newsletters. They may serve a number of purposes:

- present facts, discuss issues, and document alternative means of implementing a project;
- provide the results of studies; and/or
- provide status reports and updates on the assessment.

In addition, publications may be used to solicit feedback, for example by incorporating a return section for comments.

Media

Regular press from the proponent releases describing progress with respect to studies, impact assessment reports, and public consultation may be appropriate, especially in the communities that will be most affected.

News releases for local radio and print media may be used in relation to public information sessions. These may be used to advertise and inform before the session, and to provide follow-up after the session. Media interviews given by a spokesperson for the proponent before a public information session may also be an effective way to inform the public and generate interest in attending the session.

Internet

The Environmental Assessment Office maintains a Project Information Centre website (www.eao.gov.bc.ca) that provides general information about the environmental assessment process, as well as specific information on individual project assessments. The website provides access to project-related documents such as the application for an environmental assessment certificate, comments submitted during the assessment, and notices about the assessment. This is a main source of up-to-date information for all interested parties.

The proponent may also establish a project website to post information about the proposal, including recent press releases and the results of studies being conducted in relation to a project. An interactive website may be used by proponents for surveys and questionnaires, and to invite comments on the proposal. It could also link to the Environmental Assessment Office website.

Members of the public with an interest in a project may also use the Internet to provide information and to organize their activities. Concerned groups may use a website to provide advice on how to get involved and provide links to the Environmental Assessment Office or proponent websites.

METHODS FOR DIRECT CONSULTATION

Open Houses

Purpose

- Provide an informal setting for people to drop in to obtain information at their leisure, for the proponent to provide information about the project and receive feedback, and for the Environmental Assessment Office to provide information on the process.

Format

- Typically, an open house consists of a display complemented by handout materials. Representatives of the proponent, and possibly the Environmental Assessment Office, are available to meet with people and answer questions one-on-one. Attendees may be asked to complete a questionnaire before departing or to submit it by mail.

Considerations

- Often used as a lead-in for another activity (such as a public meeting), or as a follow-up to previous activities (such as release of information).
- Do not necessarily lead to a representative understanding of the concerns of the larger community or of specific groups, though may provide a good understanding of the views of some people.
- May be useful to have an attendance/comment sheet for follow-up or to identify contacts for future consultation activities.
- Sensitive to people's schedules.

- Allows people to peruse presentation materials at their own pace and to ask questions that they might not want to ask at a public meeting.
- Allows for response to questions in considerable detail and/or to make arrangements for follow-up.

Public Meetings

Purpose

- Provide an opportunity to make a formal presentation to the public and for the public to obtain answers to questions and provide feedback. Usually involve the proponent as well as the Environmental Assessment Office and/or relevant government agencies.

Format

- Follows a set agenda.
- Sometimes chaired or facilitated by a neutral party.

Considerations

- Can accommodate a large number of people.
- May not be an effective forum for conveying very detailed or technical information, or for obtaining an in-depth and representative understanding of the concerns and views of a particular group.
- Need to chair effectively so that a good cross-section of the audience can ask questions and give feedback.

Site Visits

Purpose

- Provide an opportunity for people to visit a particular development site in order to obtain first-hand knowledge about a project or a specific issue of concern.

Format

- Usually proponent representatives meet with invited participants to provide a verbal orientation to the site, a review of the development proposal, and a tour.
- The proponent may wish to provide handouts with more detailed background data or information.

Considerations

- Can be an appropriate means of introducing the project to government staff, First Nations or the public, and for increasing knowledge about the project and the proponent.
- Allows for a direct and immediate exchange of information between the proponent and participants.
- May not be possible to accommodate a large number of people.
- Can provide ideas for future problem-solving activities, but is not, by itself, suitable for building consensus or making decisions.
- Proponent representatives hosting the visit should have good communication skills, particularly if the project is controversial.

- Access to the facilities and public safety concerns should be considered.

Workshops

Purpose

- Provide a structured forum where one or more small groups of people work together on a common problem or task. The goals can include achieving consensus on issues, approaches and/or solutions.

Format

- Most effective when run by neutral professional facilitator(s).
- Plenary sessions should introduce and conclude a workshop.
- A round-table, or hollow square set-up, works best for group discussion.

Considerations

- A useful approach for problem-solving and building consensus.
- It is important for participants to have a clear understanding of what is to be accomplished during a workshop, so workshop expectations should be clarified at the beginning.
- For this technique to be successful, participants need to be committed to achieving the goals of the workshop.
- Facilitators need to be prepared to work through disagreement/confrontation between stakeholder groups.
- Providing participants with material prior to the meeting can enhance the effectiveness of the session. An information package distributed well in advance of the meeting can facilitate pre-meeting preparation.

Focus Group Sessions

Purpose

- A meeting of invited participants designed to gauge the probable response of one or more groups to a proposed project. Participants are specifically selected to represent particular groups or stakeholder interests.

Format

- Normally run by professional facilitators, a focus group can last from a few hours to a full day. Participants are presented with one or more "project options" and asked to provide their reactions to the material. The facilitators question the participants to find out more about the nature and intensity of their views, and also the substance of any recommendations that they would make.

Considerations

- A technique for gaining a detailed understanding of people's perspectives, values, and concerns. Focus groups are particularly useful when preliminary ideas have already been developed and need to be tested.

- Provides information and ideas, which can be used in other consultation activities, such as public meetings and workshops.
- Is not a technique for providing information to the general public, nor is it a forum to respond directly to questions, build consensus or make decisions.

Invited Presentations to Stakeholder Groups

Purpose

- An opportunity to provide information and address the questions of a specific audience.

Format

- Proponent representative(s) delivers a presentation of a specified length on specific topics. This is usually followed by a question and answer session.

Considerations

- It is important to be clear on the expectations for the presentation (e.g., scope, level of detail, issues to be covered) and the audience to whom the presentation will be given, so that the material and style of presentation can be tailored accordingly.
- Where the presentation is part of a larger agenda or meeting, the presenter should obtain clarification of his/her role in the session, beyond the presentation itself.
- While the primary focus is on providing information, the session may also enable the presenter to gain a better understanding of the concerns and issues of the audience.

APPENDIX 4:

Environmental Assessment Act

APPENDIX 5: REGULATIONS

REVIEWABLE PROJECTS REGULATION
CONCURRENT APPROVAL REGULATION
PRESCRIBED TIME LIMITS REGULATION
PUBLIC CONSULTATION POLICY REGULATION
TRANSITION REGULATION

APPENDIX 6: LIST OF RESPONSIBLE MINISTERS

Environmental assessments result in a ministerial-level decision on whether to issue an environmental assessment certificate. The ministers who make this decision are the Minister of Sustainable Resource Management, the Minister of Water, Land and Air Protection and the "responsible minister" for that particular type of project. This appendix provides the list of responsible ministers for each category of reviewable project.

CATEGORY OF REVIEWABLE PROJECT	RESPONSIBLE MINISTER
Industrial Projects	Minister of Competition, Science and Enterprise
Mine Projects	Minister of Energy and Mines
Energy Projects	Minister of Energy and Mines
Water Management Projects that raise significant local community issues	Minister of Community, Aboriginal and Women's Services
Water Management Projects other than those that raise significant local community issues	Minister of Water, Land and Air Protection
Waste Disposal Projects that raise significant local community issues	Minister of Community, Aboriginal and Women's Services
Waste Disposal Projects other than those that raise significant local community issues	Minister of Water, Land and Air Protection
Food Processing Projects	Minister of Agriculture, Food and Fisheries
Transportation Projects when the Ministry of Transportation is not the proponent	Minister of Transportation
Transportation Projects when the Ministry of Transportation is the proponent	Minister of Community, Aboriginal and Women's Services
Tourist Destination Resort Projects	Minister of Competition, Science and Enterprise

SUPPLEMENTARY GUIDE TO PROPONENTS:

THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT PROCESS

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1. INTRODUCTION

1.1 GENERAL

This "Supplementary Guide to Proponents" provides information for proponents of projects that are, or may be, subject to the *Environmental Assessment Act*. Readers should note that this document is not designed as a stand-alone guide. The information is supplemental to that provided in the "Guide to the British Columbia Environmental Assessment Process" and is to be read in conjunction with that document. It is also suggested that proponents review the "Supplementary Guide to First Nations" and "Supplementary Guide to the Public" to gain a complete overview of consultation and participation opportunities during an environmental assessment.

Throughout this document, reference is made to relevant sections of the "Guide to the British Columbia Environmental Assessment Process" where appropriate. Therefore, for ease of reading, the "Guide to the British Columbia Environmental Assessment Process" is referred to simply as "the Guide".

1.2 PURPOSE OF ENVIRONMENTAL ASSESSMENT

Environmental assessment provides for early identification of a project's potential effects on baseline conditions, and for evaluation of those effects, before irreversible project design and construction decisions are made. Generating this analysis helps foster improved project design, enabling proponents to modify projects to address identified issues of concern. This, in turn, may help to avoid costly mistakes for proponents, costs for the public sector, and adverse impacts on First Nations, local communities and the environment.

Proponents may also benefit in other ways. Permit approval procedures may be more routine and timely following environmental assessment certification, since key issues will have been addressed at a strategic level during the environmental assessment review. In the global market place, which is placing increasing emphasis on the sustainability of commodity production of all types, environmental assessment may enhance a proponent's marketing efforts.

In general, environmental assessment is an iterative project planning approach. Proponents are encouraged to modify and improve project proposals during the course of the assessment in response to feedback received from interested parties. The goal is to refer the best practicable version of the project to ministers for decision.

1.3 REQUIREMENT TO CONSULT FIRST NATIONS

In accordance with current case law, the Province has a constitutional and fiduciary duty to consult where sound claims to aboriginal rights and title are at issue. Accordingly, the Environmental Assessment Office has an obligation to consider aboriginal interests in relation to an environmental assessment to ensure that legal obligations towards First Nations are met, First Nation issues and concerns identified, and adequate efforts made to address those issues and concerns.

As a result of a recent (2002) court case[1], proponents of a reviewable project may have a duty to consult in good faith with First Nations and to seek workable accommodations of First Nation interests (separate from any specific obligations that may be required as part of a project assessment under the *Environmental Assessment Act*). Proponents are advised to contact the Environmental Assessment Office as early as possible to identify which First Nations to approach to:

a) determine whether there are First Nations with interests that may be affected by the project, thereby requiring consultation; and
b) discuss consultation requirements within the environmental assessment process, including during development of the terms of reference for an application and in the terms of reference.

Further information on the legal requirements to consult First Nations and on the Provincial Consultation Policy (2002) is contained in Section 3.3 and Appendix 2 of the Guide. The Provincial Consultation Policy (2002), or any updated version of it, may be viewed on the Project Information Centre website (www.eao.gov.bc.ca).

There is broad flexibility to discuss with First Nations the manner in which they wish to be involved in an environmental assessment. However, general proponent responsibilities and activities related to First Nation consultation during the course of a typical assessment are included in the discussion in Section 2. Further guidance on consulting with First Nations is provided in Appendix 1 of this supplement.

1.4 REQUIREMENT TO CONSULT THE PUBLIC

Environmental assessment includes participation by all interested members of the public. Public consultation during an environmental assessment contributes to the gathering and sharing of all relevant information related to the potential effects of a proposed project. At the end of the assessment, public issues are reported on, so they can be taken into consideration by ministers in making their decision on project approval.

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[1] Haida Nation v. British Columbia and Weyerhaeuser (2002) BCAA 462

Proponents are encouraged to identify potentially affected members of the public and undertake consultation activities as early as possible to facilitate effective issue identification. The general proponent responsibilities and activities related to public consultation during the course of a typical environmental assessment are included in the discussion in Section 2 below. Further guidance on consulting with the public is provided in Appendix 2 of this supplement.

1.5 COORDINATION WITH THE *CANADIAN ENVIRONMENTAL ASSESSMENT ACT*

When a project is subject to the *British Columbia Environmental Assessment Act* and the *Canadian Environmental Assessment Act*, the Environmental Assessment Office works closely with the Canadian Environmental Assessment Agency and other federal agencies to ensure the legislated environmental assessment requirements of both levels of government are met and integrated through a coordinated process. In accordance with the Canada-British Columbia agreement on environmental assessment cooperation (see Section 3.2 of the Guide), the two levels of government develop a project-specific workplan that sets out the process, information requirements and analysis necessary to meet the requirements of each party. Both governments will work with the proponent during development of the terms of reference and preparation of the application, and federal agencies will provide input to the assessment report, to ensure both federal and provincial reporting requirements are fulfilled.

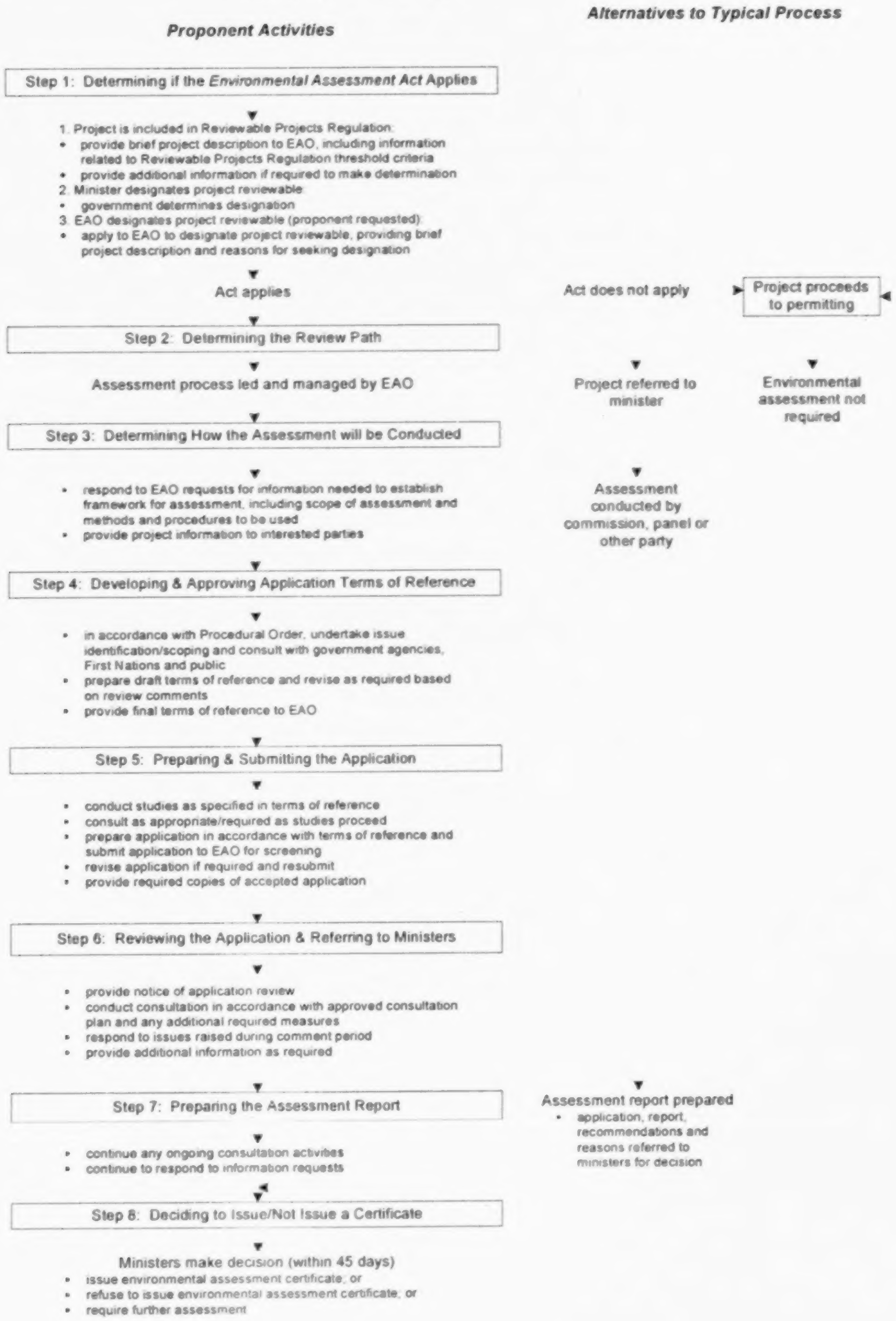
2. THE ENVIRONMENTAL ASSESSMENT

This section provides information on the proponent's role and responsibilities during a typical environmental assessment conducted under the *Environmental Assessment Act*, as outlined in Section 5 of the Guide. In general, the proponent is responsible for:

- clarifying with the Environmental Assessment Office whether the project requires an environmental assessment certificate;
- working with the Environmental Assessment Office through a consultative issue identification and scoping process to determine the issues and effects to be addressed in the assessment, and the information and consultation requirements;
- developing terms of reference for an application for an environmental assessment certificate;
- conducting the required studies and preparing the application and associated materials;
- producing and distributing the required copies of the application, and advertising the availability of the application for review;
- directly consulting with the public and First Nations to develop an understanding of community values and interest in the project, and to identify and respond to issues of concern; and
- consulting with government agencies and making the necessary applications for statutory permit approvals.

A flowchart of a typical environmental assessment focusing on the proponent's activities is provided in Figure 1. The flowchart and the discussion in Sections 2.1 to 2.8 are based on the eight steps set out in Section 5.1 of the Guide.

Figure 1. Proponent Activities in Typical Environmental Assessment Led and Managed by the Environmental Assessment Office (EAO)



Alternatives to Typical Process

Proponent Activities

Step 1: Determining if the *Environmental Assessment Act* Applies

1. Project is included in Reviewable Projects Regulation:
   - provide brief project description to EAO, including information related to Reviewable Projects Regulation threshold criteria
   - provide additional information if required to make determination
2. Minister designates project reviewable:
   - government determines designation
3. EAO designates project reviewable (proponent requested):
   - apply to EAO to designate project reviewable, providing brief project description and reasons for seeking designation

Act applies

Act does not apply

Project proceeds to permitting

Step 2: Determining the Review Path

Assessment process led and managed by EAO

Project referred to minister

Environmental assessment not required

Step 3: Determining How the Assessment will be Conducted

- respond to EAO requests for information needed to establish framework for assessment, including scope of assessment and methods and procedures to be used
- provide project information to interested parties

Assessment conducted by commission, panel or other party

Step 4: Developing & Approving Application Terms of Reference

- in accordance with Procedural Order, undertake issue identification/scoping and consult with government agencies, First Nations and public
- prepare draft terms of reference and revise as required based on review comments
- provide final terms of reference to EAO

Step 5: Preparing & Submitting the Application

- conduct studies as specified in terms of reference
- consult as appropriate/required as studies proceed
- prepare application in accordance with terms of reference and submit application to EAO for screening
- revise application if required and resubmit
- provide required copies of accepted application

Step 6: Reviewing the Application & Referring to Ministers

- provide notice of application review
- conduct consultation in accordance with approved consultation plan and any additional required measures
- respond to issues raised during comment period
- provide additional information as required

Step 7: Preparing the Assessment Report

- continue any ongoing consultation activities
- continue to respond to information requests

Assessment report prepared
- application, report, recommendations and reasons referred to ministers for decision

Step 8: Deciding to Issue/Not Issue a Certificate

Ministers make decision (within 45 days)
- issue environmental assessment certificate; or
- refuse to issue environmental assessment certificate; or
- require further assessment

2.1 STEP 1: DETERMINING IF THE *Environmental Assessment Act* APPLIES

A project is subject to the *Environmental Assessment Act* when:

1) it falls within a category of project that is included in the Reviewable Projects Regulation and is of sufficient size to meet or exceed the prescribed thresholds[2];
2) the Minister of Sustainable Resource Management designates it as reviewable[3]; or
3) at the request of the proponent, the Executive Director of the Environmental Assessment Office designates it as reviewable.[4]

2.1.1 Project is Included in the Reviewable Projects Regulation

The proponent of a project proposal which is, or may be, included in the Reviewable Projects Regulation, should contact the Environmental Assessment Office once the project concept is developed to confirm whether the project is subject to the *Environmental Assessment Act*. Proponents should provide a short written description of the project. A one- or two-page letter or outline is normally sufficient for this purpose. Information related to the criteria set out in the Reviewable Projects Regulation should be included, and will be requested if not initially provided.

In most cases, Environmental Assessment Office staff are able to determine quickly whether or not the project is reviewable under the Act. However, if there is some uncertainty, the Environmental Assessment Office will consult with other agencies with particular expertise (e.g., the Ministry of Water, Land and Air Protection may assist in determining the reviewability of a special waste project). The proponent may be required to provide additional information on a particular aspect of the proposal to facilitate a determination on the applicability of the Act. The Environmental Assessment Office then confirms whether or not the Act applies to the project.

2.1.2 Minister Designates the Project as Reviewable

In exceptional cases, the Minister of Sustainable Resource Management may designate a proposed project as reviewable, even though it is not included in the Reviewable Projects Regulation, if the project may have significant adverse effects, and the minister is satisfied that it would be in the public interest for the project to undergo an environmental assessment. The information required of the proponent in this case would vary from project to project, depending on the special circumstances and reasons why the designation was being considered. Consequently, this supplement does not address proponent responsibilities in these circumstances.

[2] Section 5 of the Act.
[3] Section 6 of the Act.
[4] Section 7 of the Act.

2.1.3 Proponent Applies to Have a Project Designated Reviewable

If a proponent wishes to obtain an environmental assessment certificate for a project that is not included in the Reviewable Projects Regulation, the proponent may apply to have the project designated as reviewable by the Executive Director of the Environmental Assessment Office. The application should include a description of the project and information related to the criteria set out in the Reviewable Projects Regulation for that type of project. The application should clearly state the reasons why the proponent wishes the designation, and should include any relevant data and information to support those reasons. The Environmental Assessment Office will consider the reasons for the request and make a decision on whether or not to make the designation.

2.2 STEP 2: DETERMINING THE REVIEW PATH

In nearly all cases, the environmental assessment will be led and managed at the staff level by the Environmental Assessment Office. However, under special circumstances the Environmental Assessment Office may either:

- immediately refer the project to the Minister of Sustainable Resource Management to determine how the assessment will be conducted[5]; or
- determine that an environmental assessment is not required.[6]

2.2.1 Minister Determines How the Assessment will be Conducted

Because the minister has broad discretion to determine how an assessment is conducted, there is no typical process. Each assessment will be designed to meet the exceptional circumstances identified by the Environmental Assessment Office in referring the project to the minister. Consequently, the requirements and responsibilities of the proponent will be different in every case and are not covered in this supplement. (See Section 6.2 of the Guide for further information on circumstances when the minister may determine the assessment process.)

2.2.2 Environmental Assessment not Required

In exceptional cases, the Environmental Assessment Office may consider waiving the requirement for an environmental assessment certificate, even though the project is included in the Reviewable Projects Regulation, when it is determined that the project will not result in any significant adverse environmental, economic, social, heritage or health effects.

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[5] Section 10(1)(a) of the Act.

[6] Section 10(1)(b) of the Act.

If the Environmental Assessment Office is considering waiving the requirements for an environmental assessment, the proponent may be required to provide further information to clarify the likelihood of impacts. Such information may relate to the project location and design, or the impact management measures available to manage any potential adverse effects.

2.2.3 Assessment Led and Managed by the Environmental Assessment Office

For most reviewable projects, the proponent will be required to obtain an environmental assessment certificate through a process led and managed by the Environmental Assessment Office. Therefore, the information in the remainder of Section 2 deals with the steps, and the requirements of the proponent, in a typical Environmental Assessment Office-led process.

2.3 STEP 3: DETERMINING HOW THE ASSESSMENT WILL BE CONDUCTED

The Environmental Assessment Office is responsible for determining how the assessment will be conducted, including the scope of the assessment and the procedures and methods to be used, and for issuing a procedural order.[7] However, the Environmental Assessment Office may consider input and advice from the proponent and other parties in making this determination.

The proponent is responsible for providing information about the project to interested parties, undertaking consultations with government agencies, First Nations and the public, and working with the Environmental Assessment Office to begin the issue identification and scoping process. The proponent's consultation at this stage, and the issue identification and scoping process, will lead to the development and finalization of the terms of reference for the application (Step 4).

Proponents are encouraged to identify potentially affected members of the public and undertake public consultation activities as early as possible. The Environmental Assessment Office will conduct its own preliminary identification of potentially interested parties, and will advise the proponent of any additional parties that should be contacted.

The Environmental Assessment Office will determine which, if any, First Nations may have interests affected or impacted by the project, and will advise the proponent as early as possible in the assessment process. The proponent should identify any arrangements between the proponent and First Nations showing First Nation support for the project.

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[7] Section 11(1) of the Act.

Proponent responsibilities with respect to First Nation and public consultation that may be addressed in the procedural order include:

- consulting with specified First Nations or members of the public, including about the conduct of studies;
- providing information on the project to First Nations and the public in an understandable form, the assessment process, the consultation process, and the requirements placed on proponents to consult;
- developing consultation plans for approval by the Environmental Assessment Office under the Public Consultation Policy Regulation, and/or carrying out prescribed consultation plans;
- providing opportunities for First Nations and/or members of the public to participate in studies;
- notifying First Nations and the public about the availability of the application for review, and about open houses, public meetings or other consultation activities; and
- reporting in the application on the consultation activities undertaken and planned, the issues identified by First Nations and the public through consultations, and how the proponent proposes to address issues that are relevant to the assessment.

2.4 STEP 4: DEVELOPING AND APPROVING TERMS OF REFERENCE FOR THE APPLICATION

The proponent may be required to provide information at any point in the assessment. However most, if not all, the information required from the proponent will be provided in the application for an environmental assessment certificate. Consequently, the procedural order will normally include a requirement for the proponent to prepare terms of reference for the application. The terms of reference must be approved by the Environmental Assessment Office to ensure they will adequately address the identified issues.

Development of the terms of reference is a key step for the proponent. Terms of reference are developed in accordance with any requirements set out in the procedural order, and are based on an issue identification and scoping process conducted in cooperation with the Environmental Assessment Office. The issue identification and scoping process normally includes consultation with government agencies, First Nations, the public and other parties as appropriate. The goal is to ensure that all the potential effects and issues of relevance to the assessment are incorporated in the terms of reference, so that the application will be as complete as possible when submitted. The Environmental Assessment Office is responsible for determining which issues are relevant to the environmental assessment, and which are outside the scope of the assessment. The Environmental Assessment Office will seek policy guidance from other agencies, if required, in making this determination.

In accordance with the Public Consultation Policy Regulation, the terms of reference will normally require the proponent to:

- conduct a public consultation program that is acceptable to the Environmental Assessment Office[8]; and
- provide in the application a report on consultation activities undertaken in relation to the project and a proposed consultation plan to be carried out during review of the application.[9]

First Nations are also consulted under the *Environmental Assessment Act* process. If First Nations choose not to participate in the environmental assessment, not to respond to consultation efforts by the proponent or the Environmental Assessment Office, or not to provide information to the proponent or the Environmental Assessment Office, the proponent may be required to identify and report on First Nation interests through other means, such as independent studies or literature reviews.

Following the issue identification and scoping process, the proponent prepares draft terms of reference, which are submitted to the Environmental Assessment Office. The Environmental Assessment Office coordinates a review of the draft terms of reference, which may include review by government agencies, First Nations and/or the public. There may be a formal, time-limited public comment period on the draft terms of reference. The Environmental Assessment Office will advise the proponent of any required additions or revisions. The terms of reference must be approved by the Environmental Assessment Office. There is no time limit on the preparation and approval of terms of reference unless one is stipulated in the procedural order. The final version of the terms of reference will be posted on the Project Information Centre website.

2.5 STEP 5: PREPARING AND SUBMITTING THE APPLICATION

The proponent is responsible for preparing the application according to the approved terms of reference.[10] This involves conducting all the required studies and consultation measures, and reporting on the results in the application documentation. In most cases, preparation of the application continues the iterative process, with ongoing discussions between the proponent, the Environmental Assessment Office, other government agencies, First Nations, the public and other parties as appropriate.

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[8] Section 4(1)(a) of the Public Consultation Policy Regulation

[9] Section 4(1)(b) of the Public Consultation Policy Regulation

[10] Sections 16(1) and 16(2) of the Act.

Once the application is prepared, the proponent submits it to the Environmental Assessment Office. The Environmental Assessment Office has 30 days to screen the application to ensure it contains the required information[11], as set out in the terms of reference. If the application is deficient in presenting the required information, the Environmental Assessment Office will identify the deficiencies in writing.[12] The proponent then revises and resubmits the application. The Environmental Assessment Office may only accept an application for review if it contains the required information.[13]

In accordance with the Public Consultation Policy Regulation, during this 30 day screening period the Environmental Assessment Office will usually assess the adequacy of any public consultation measures that the proponent has taken, or proposes to take, in relation to the application, and will specify any further measures that the proponent must carry out. Additional measures may relate to the provision of public notice, access to information, consultation with the general public, or consultation with specified parties. The Environmental Assessment Office may also specify a period within which the additional measures must be carried out. (See Section 5.3.2 of the Guide for further information on the Public Consultation Policy Regulation). The Environmental Assessment Office will also assess the adequacy of the proponent's First Nation consultation.

When the application is accepted, the Environmental Assessment Office notifies the proponent in writing and may require the proponent to supply and distribute any additional hard (paper) copies that may be required by government reviewers, First Nations or other parties.[14] The proponent may also be required to provide an electronic copy of the application in an acceptable format for posting on the Project Information Centre website. The proponent should contact the Project Information Centre at the early stage of application planning (prior to finalizing terms of reference for individual studies with project consultants) to ensure all documentation that may form part of the application is prepared in an appropriate electronic format. Guidance on submitting electronic documentation is provided in Appendix 3 of this supplement.

If the proponent does not submit the application within three years after terms of reference for the application have been finalized, the assessment may be suspended or terminated.[15] If a delay is anticipated, the proponent should contact the Environmental Assessment Office well before the three-year deadline to discuss the situation and whether an extension to the deadline is warranted to allow additional time for submission of the application.

If the proponent intends to apply for concurrent review of any applications for provincial approvals[16], the proponent must do so no later than the applicable deadline. For more information on applying for concurrent approvals see Section 3.2 of this supplement.

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[11] Section 16(3) and 24(1)(a) of the Act, Section 2 of the Prescribed Time Limits Regulation.

[12] Note that the 30-day screening does not constitute a review of the adequacy of the application to address the issues. That detailed review occurs during Step 6, the application review.

[13] Section 16(3) of the Act.

[14] Section 16(4) of the Act.

[15] Section 24(3) of the Act, Section 5 of the Prescribed Time Limits Regulation.

[16] Section 23(1) of the Act.

2.6 STEP 6: REVIEWING THE APPLICATION

Review of the application formally begins on the date that the Environmental Assessment Office receives the required copies of the accepted application from the proponent. If no additional copies are required, the review begins on the date that the Environmental Assessment Office notifies the proponent that application is accepted. From that date, government has up to 180 days to complete the review of the application, prepare the assessment report, and refer the application to ministers for a decision.[17] The Environmental Assessment Office conducts the review in accordance with the procedures established in the procedural order, or in any variation to that order.[18]

The Environmental Assessment Office and the proponent may both be required to provide notice in relation to the review of the application. The intent of notification is to reach individuals who may want to participate in the review or may be affected in some way by the project, including but not limited to, residents of the community in which the project is located and residents of adjacent communities. The proponent is usually responsible for advertising the availability of the application for comment, and for implementing any further notification procedures indicated by the Environmental Assessment Office (e.g., flyers, posters, etc.). Details of the proposed advertising plans should accompany the application, since there will be a relatively short time frame for arranging advertising once the application has been accepted for review.

In general, when the proponent is required to provide notification, this is normally accomplished through advertising in local newspapers in the vicinity of the proposed project. In some cases, notification may be required in newspapers with a broader distribution if there are significant regional or provincial interests. Where satisfactory in the Environmental Assessment Office's opinion, other means of giving notice may also be used (e.g., mailing of notices).

In most cases there is a formal public comment period of between 30 and 75 days for public review of the application. The length of the public comment period on the application is determined by the Environmental Assessment Office, taking into account anticipated public interest, extent of pre-application consultation and other factors. In addition, First Nations and government agencies review the application and have the opportunity to provide comments. The proponent is provided an opportunity to respond to comments, and a time limit may be specified for the submission of such responses. During the application review, the proponent will be required to carry out the consultation measures stipulated in the proponent's consultation plan, and any additional measures specified by the Environmental Assessment Office.

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[17] Section 24(1)(b) of the Act, Section 3 of the Prescribed Time Limits Regulation.
[18] Section 16(5) of the Act.

The Environmental Assessment Office may keep track of issues raised by the public and other parties by means of an issue tracking document which may be posted on the Project Information Centre website. Issues that are recorded may originate from a variety of sources, including:

- discussions during the issue scoping and identification process that are facilitated by the Environmental Assessment Office, and any ensuing correspondence;
- written comments submitted to the Environmental Assessment Office during the comment periods;
- analysis and advice recorded by the Environmental Assessment Office during project-related meetings, and any follow-up communications where further attention is needed;
- public and First Nation comments recorded by the proponent or Environmental Assessment Office at consultation sessions; and
- proponent responses to comments.

As the application is being reviewed, the proponent may be required to provide additional information to address certain issues more fully. If this information is substantial enough that the assessment cannot effectively proceed until the information is submitted, the Environmental Assessment Office may suspend the review. In this case, the 180 day time limit would be put on hold until the required information were received. When additional information is required on a particular issue but the assessment can still effectively proceed on all other aspects of the project, the review period will not normally be suspended. The proponent may request that the 180 day review period be put on hold if more time is required to respond to issues than was provided for in the procedural order. (For further information on suspension or extension of the 180 day review period, see Section 5.1.6 of the Guide.)

2.7 STEP 7: PREPARING THE ASSESSMENT REPORT AND REFERRING THE APPLICATION TO MINISTERS

On completion of the application review, the Environmental Assessment Office prepares an assessment report. The assessment report will normally be prepared in consultation with other government agencies and First Nations involved in the assessment. The assessment report documents the findings of the environmental assessment, including the issues raised in relation to the project and how the issues have been or will be addressed[19], and it will include the proponent's responses to issues raised. The Environmental Assessment Office may also document any recommendations to ministers and the reasons for the recommendations.[20]

[19] Section 17(2)(a) of the Act

[20] Sections 17(2)(b) and 17(2)(c) of the Act

2.8 STEP 8: DECIDING TO ISSUE/NOT ISSUE AN ENVIRONMENTAL ASSESSMENT CERTIFICATE

After referral of the application and assessment report, ministers have 45 days to decide whether or not to issue an environmental assessment certificate, or whether to require further assessment.[21]

In accordance with current case law, compliance with the *Environmental Assessment Act* may not, in and of itself, be sufficient to meet the Province's legal obligations to First Nations. Accordingly, in deciding whether to issue an environmental assessment certificate, the ministers must carefully consider whether these legal obligations have been met.

If ministers decide to grant an environmental assessment certificate for the project, the Environmental Assessment Office delivers the decision and the certificate to the proponent.[22] If ministers decide to require further assessment, this could be in any form the ministers deem appropriate. The certificate will contain project-specific conditions that the proponent must adhere to in proceeding with the project.

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[21] Section 17(3) of the Act; Section 4 of the Prescribed Time Limits Regulation.
[22] Section 17(4) of the Act.

3. POST-CERTIFICATION

3.1 GENERAL

The proponent of a project that is subject to the *Environmental Assessment Act* is still required to obtain all other applicable approvals, such as permits and licenses. These are identified during the course of an environmental assessment and requirements are coordinated to the extent practicable. As part of the project-specific environmental assessment process, procedures will be put in place to ensure the smooth transition to permitting once an environmental assessment certificate has been issued. Once the environmental assessment certificate has been issued, regulatory agencies may issue other approvals required for the project.

3.2 CONCURRENT APPROVAL

A proponent may request that some or all provincial approval applications be processed concurrently with the environmental assessment review.[23] Provisions related to concurrent approval are set out in the Concurrent Approval Regulation (a copy of the regulation is contained in Appendix 5 of the Guide). To be eligible for concurrent review, the approval must be required to construct, operate modify, dismantle, abandon or otherwise undertake part or all of the reviewable project that is the subject of the environmental assessment.[24]

If a proponent wishes to apply for concurrent review of approvals, the proponent must provide written notice to the Environmental Assessment Office:

- identifying the approvals that are being applied for concurrently;
- attaching copies of those applications and supporting material; and
- requesting that those applications be given concurrent consideration during the environmental assessment.[25]

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[23] Section 23(1) of the Act.
[24] Section 1 and 3 of the Concurrent Approval Regulation.
[25] Section 4 of the Concurrent Approval Regulation.

The Environmental Assessment Office may specify in the procedural order, or in any variation to the order, the deadline by which the proponent must apply for concurrent review of approvals.[26] If no other earlier deadline is so specified, the proponent must apply for concurrent review of approvals no later than either:

- seven days after the date on which the Environmental Assessment Office notified the proponent that the application for an environmental assessment certificate was accepted for review, if no additional copies of the accepted application were required[27]; or
- if additional copies of the accepted application for an environmental assessment certificate were required, the date on which the proponent submitted those additional copies to the Environmental Assessment Office.[28]

The Environmental Assessment Office will respond in writing to the proponent confirming whether or not the applications for concurrent review are accepted.[29] The Environmental Assessment Office will refuse to allow use of the concurrent approval provisions for any approval that is not legitimately required to construct, operate or otherwise undertake the reviewable project (e.g., for aspects of the project not subject to environmental assessment). When there is uncertainty regarding whether an approval is eligible for concurrent review, the Environmental Assessment Office will consult with the applicable regulatory authority before making a decision.[30]

When the concurrent approval provisions apply, the regulatory authority responsible for issuing the approval must review the approval application expeditiously. Within 75 days of the date that the Environmental Assessment Office notified the proponent of acceptance of the application for an environmental assessment certificate, the regulatory authority must notify the proponent and the Environmental Assessment Office in writing of any additional information requirements.[31]

If an environmental assessment certificate is issued, the regulatory authority must, within 60 days after issuance of the certificate, either:

- issue the approval;
- refuse to issue the approval, indicating the reasons for the refusal; or
- specify a later date on which the proponent may expect a decision, indicating the reasons for the postponement.[32]

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[26] Section 5(a) of the Concurrent Approval Regulation.
[27] Section 5(b) of the Concurrent Approval Regulation.
[28] Section 5(c) of the Concurrent Approval Regulation.
[29] Section 6(1) and 6(2) of the Concurrent Approval Regulation
[30] Section 6(3) of the Concurrent Approval Regulation.
[31] Section 8(1)(b) of the Concurrent Approval Regulation.
[32] Section 24(1)(d) of the Act, Section 8(3) of the Concurrent Approval Regulation.

In deciding whether or not to issue an approval, the regulatory agencies must consider the Province's legal obligations to First Nations, including the duty to consult. Agencies review the information collected and consultation during the environmental assessment to determine whether the environmental assessment process fully addressed the consultation requirements.

Regulatory authorities responsible for issuing the approvals will be involved in the environmental assessment. Therefore, if there were doubt about whether or not an approval would be issued, that information would be included in the assessment report and taken into consideration in the ministers' decision.

The provisions for concurrent approval do not apply to federal or local government authorizations. If a project is subject to a local Official Community Plan and zoning by-laws, the proponent may need to apply separately to the appropriate local government for by-law changes to allow the project to proceed if the existing zoning is not compatible. In addition, local government permitting requirements and procedures may apply, such as for building permits or development permits. In this case, separate applications to the appropriate local government authorities may be required.

3.3 MONITORING, EVALUATION AND REPORTING

Environmental assessment involves predicting the potential effects of a proposed project and defining ways to prevent, minimize or mitigate any adverse effects. Based on past experience, modeling techniques, and other methods, it is possible to estimate the nature and magnitude of many effects and to identify successful ways to deal with them. However, impact prediction is not an exact science. It is therefore important to monitor, evaluate and report on conditions at and around a project during and after construction, to determine if the impact management methods are working.

An environmental assessment certificate may contain requirements for monitoring and evaluating the effects of a project, and reporting on the results. As well, many projects are also subject to requirements associated with other statutory approvals, which may include proponent responsibilities for implementing management and mitigation plans, evaluating compliance with permitted limits, and reporting the results to regulatory agencies. The requirements of other approvals are taken into consideration in developing the conditions of a project approval certificate to ensure a coordinated overall monitoring, evaluation and reporting system is in place.

3.4 ENVIRONMENTAL MANAGEMENT

A post-certification monitoring, evaluation and reporting system includes two key elements: an environmental management system and an environmental management plan.

An environmental management system provides the framework for a proponent to address environmental concerns in an orderly and consistent manner through the allocation of resources, assignment of responsibilities, and ongoing evaluation of practices, procedures and processes.

An environmental management plan sets out the mitigation, monitoring and other measures to be conducted during construction, operation and/or decommissioning of the project to eliminate adverse effects, or reduce or offset them to acceptable levels. The plan includes a step-by-step description of the actions the proponent (including all contractors, sub-contractors and employees) will take to implement these measures. The plan may define respective roles and responsibilities for the implementation of the plan, the monitoring of results, and the reporting and review of the plan's implementation and success. Appropriate arrangements for liaison and consultation between the proponent, contractors, government, First Nations and the public may be a necessary part of the plan.

The objectives of an environmental management plan include:

- providing a mechanism to track the success of the environmental management measures and to determine whether the compliance levels set were appropriate and effective;
- providing government agencies, First Nations and the public with assurance that the detailed design elements (which may not be available until after the environmental assessment is completed) will incorporate appropriate environmental management measures;
- collating all environmental management and mitigation measures into one, coordinated plan;
- setting out contingency plans to be implemented in an adaptive management framework, should the monitoring and evaluation determine the need for further mitigative measures; and
- providing a vehicle to assist government meet its commitment to act as the steward of public resources, in partnership with the proponent.

3.5 COMPLIANCE AND ENFORCEMENT

The *Environmental Assessment Act* prohibits the development of a project contrary to the terms of the environmental assessment certificate.[33] Staff from appropriate regulatory agencies may inspect any works or activities on the site of a reviewable project. In the event of non-compliance with conditions of an environmental assessment certificate, the Minister of Sustainable Resource Management may halt the construction, operation, modification, dismantling or abandonment of a project until the proponent complies, or may require the proponent to carry out measures to mitigate the effects of non-compliance.[34] The minister may also propose a compliance agreement, whereby the certificate holder undertakes to comply with certificate requirements.[35]

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[33] Sections 8(2) and 34 of the Act.
[34] Section 34(1)(b) of the Act.
[35] Section 36 of the Act.

APPENDIX 1: GUIDANCE ON CONSULTING WITH FIRST NATIONS

INTRODUCTION

This appendix provides proponents with information and guidance on consulting with First Nations. The information is intended to assist proponents in gaining an understanding of the value of First Nation consultation and how First Nations may themselves view meaningful consultation. The information is important as the respective parties often have differing and conflicting perspectives. This appendix also provides an overview of the types of issues that are typically of concern to First Nations and may be raised during an environmental assessment, and a list of references to other potentially usual information.

Some of this information and advice on First Nation consultation and First Nation interests was developed following discussions with First Nation environmental assessment practitioners. It is derived from comments on what consultation should be and how, if it is to be considered meaningful by a First Nation, it should incorporate and address First Nation interests. These practitioners recognized that while the Province and proponents do not consider consultation to be a joint decision-making process, it can nonetheless be a process that leads to mutually acceptable decisions. A mutually acceptable decision may also provide additional legal certainty to proponents.

It must be noted that this information is included as general guidance to provide proponents with some information on what to expect in discussions with First Nations. It is not intended to suggest that all of these considerations are necessary or appropriate in specific consultations.

COMMUNITY KNOWLEDGE/TRADITIONAL KNOWLEDGE

First Nations may have unique knowledge and information that can be brought into an environmental assessment process to help assess the potential impacts of a proposed project and inform recommendations and decisions. This community-based knowledge also is seen by some as having the potential to contribute to the conservation, management and sustainable use of biological diversity (which is itself linked to the cultural diversity of indigenous peoples). This information is sometimes referred to as traditional knowledge.[36] Traditional knowledge is a body of knowledge built up over time, and continuing into the present, by people living in close contact with the natural environment. It includes understanding of plants and animals (properties or locations), the functioning and management of ecosystems, and the reliance on species for food, medicines, fuel, or shelter. In addition to informing the environmental assessment process, traditional knowledge can assist with building relationships between First Nations and the proponents responsible for project studies.

There are several ways First Nation traditional knowledge and community information can be brought into the environmental assessment process:

- by First Nations providing comments on project-related documentation, such as the application; through existing studies and information;
- through new studies such as archaeological overview/impact assessments and current and traditional use studies;
- and as sub-components of other studies such as wildlife and socio-economic studies.

Proponents, the Environmental Assessment Office and First Nations usually work together when planning current and traditional use studies, which are one of several ways of collecting community knowledge. Such studies should be performed in consultation with the aboriginal people affected and must be conducted in a professional way to ensure credibility. Ideally, they are conducted by someone acceptable to First Nations to avoid disputes about the results. The information produced from such studies can be integrated with more scientific modes of information collection and used to fulfil the proponent's and the Environmental Assessment Office's legal obligations.[37]

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[36] *Guidelines for Environmental Assessments and Traditional Knowledge*, Alan Emory and Associates, 47 Okanagan Dr., Nepean, Ontario, K2H 7E9, March, 1997

[37] The Environmental Assessment Office does not usually require traditional use studies to be conducted on private fee simple land where there is no legal right of access, on land that has been extensively disturbed such that any potential aboriginal rights can no longer be practiced, or on linear corridors where there is room to avoid specific sites.

First Nations are often concerned about how their knowledge will be used or put into practice. They may present the following principles to guide discussions and practices, or as preconditions for imparting their traditional or community knowledge:

- respect for the rights of the holders of the knowledge;
- confidentiality (except for mutually agreed upon purposes);
- involvement of the holders of knowledge; and
- beneficial use to the interests of the holders of the knowledge.

CONSULTATION FEATURES

Of overall importance to aboriginal people is that, regardless of the consultation process used, they and their concerns are treated with respect and that they are heard before decisions are made. Key features that First Nations have identified as demonstrating respect in the consultation process include:

early involvement: Consultation should occur as early as possible in the planning of any development and should initially focus on building relationships. The first meeting is often only to make introductions, provide an overview of the project, and begin the process of discussing how consultation should be done.

comprehensiveness: Consultation should include a range of considerations such as:
- involving First Nations in relevant studies;
- incorporating community and traditional knowledge into baseline studies;
- identifying First Nation interests potentially impacted by a project; and
- identifying and developing prevention, avoidance and mitigation measures to address any significant potential adverse impacts on First Nation interests.

flexibility: Each consultation process will be different since it will depend on the particular proposed project and the political, traditional and social structure and organization of the First Nation(s) potentially affected by the project. An appropriate consultation program is often achieved by involving First Nations in the design of the consultation process.

inclusiveness: Consultation may involve elected officials as well as community consultations.

accommodations: Proponents should consider the need to attempt to accommodate First Nation interests impacted by their project.

provision of understandable information: Project information should be provided in an appropriate and understandable form, and may include site tours, visuals and large-scale maps to facilitate identification of locations and sites. There should be opportunities to ask questions and obtain answers.

follow-up: First Nations may want time to reflect on the information they receive and then schedule follow-up meetings to discuss concerns. Opportunities for both written and oral feedback on projects may be desirable.

protocol agreements: Protocol agreements may be negotiated that include provisions for such things as resources, time frames, dispute resolution, the involvement of First Nations in the selection of consultants conducting research on topics of interest to them, and the role of First Nations in project monitoring.

ongoing consultation: Consultation must not only begin early, but may continue into the post-certificate permitting stage and include such things as compliance monitoring.

recognition of the need for First Nation agreement: Proponents should recognize those issues that clearly require First Nation agreement (e.g., the use of First Nation reserve land).

informed decision-making: The goal of consultation should be to arrive at a decision that is fully informed as to the potential impacts of a project on First Nation interests.

FIRST NATION CAPACITY

It is important for proponents to recognize that participation in the assessment of major projects may present resource and capacity issues to some First Nations. Insufficient human and financial resources may affect the ability of First Nations to consult in a timely and comprehensive manner. Consequently, First Nations may request funding for:

- developing their understanding of the environmental assessment process;
- participating in meetings, including travel to attend meetings, participate on committees or in workshops, etc.;
- ceremonial costs;
- professional assistance to enhance participation;
- internal consultation and decision making; and
- economic benefit agreement discussions/negotiations.

Potential sources of funding include the Environmental Assessment Office (subject to appropriations), proponents, federal departments such as Department of Indian and Northern Affairs, and the Canadian Environmental Assessment Agency when the project is subject to a panel review under the *Canadian Environmental Assessment Act*. First Nations often request assistance from the proponents. While there is no specific legal requirement to provide such funding, First Nations often regard it as important to their meaningful participation and, from a proponent's perspective, there often exists a good business case for providing such funding.

EXAMPLES OF FIRST NATION ISSUES RAISED IN ENVIRONMENTAL ASSESSMENTS

The following lists identify issues sometimes raised by First Nations in relation to a proposed project. It is not intended to imply that all these issues will be relevant in every case, or that a proponent is obligated to address all of these issues in relation to any specific project.

Economic Issues

First Nations often approach environmental assessments from the perspective of their potential economic interests in a project. Consequently, they may see development of benefit agreements as part of doing business, rather than as a cost of doing business. Issues identified by First Nations for consideration may include:

- number of jobs aboriginal people are eligible and qualified for
- training opportunities for aboriginal workers
- potential income levels for aboriginal workers
- impacts on land tenure/lease arrangements on reserve land
- potential economic return to aboriginal communities
- potential benefits to aboriginal communities in the vicinity of the project (e.g., subsidized power supply, service contracts, etc.)
- employment equity practices (all phases of project)
- number of aboriginal people potentially unable to continue traditional fishing, hunting and trapping activities in the area as a result of the project
- existing tourism activities which could be affected
- loss of land use, foreshore use, or mineral use
- impacts on current aboriginal food sources/food as an income source for the community.

Environmental Issues

- effects on medicinal herbs and plants traditionally gathered in the area
- effects on quantity and quality of traditional aboriginal food sources
- impacts on water quality
- impacts on water supply
- increased access to previously isolated areas
- impacts of seismic activities (e.g., in oil and gas exploration)
- cumulative effects, especially on wildlife.

Social Issues

- services for aboriginal people (e.g., education, housing, health care, recreation, fire protection and judicial services)
- aboriginal community social stability (e.g., community cohesion, family breakdown)
- proposed relocation of a community
- community infrastructure that may affect aboriginal communities (e.g., water supply, sewage)
- number of people able to move back to a community due to employment opportunities provided by a project
- community-healing projects
- off-reserve housing
- isolated communities exposed to an outside workforce unfamiliar with aboriginal culture
- traditional lifestyles (e.g., conflict with the time for harvesting medicinal herbs and work schedule).

Heritage and Cultural Issues

Impacts on:

- archaeological sites of interest to aboriginal people
- designated aboriginal cultural sites
- documented but undesignated sites
- secret sites (e.g., ritual bathing pools)
- undocumented aboriginal cultural sites with no permanent physical presence (e.g., two-week berry picking)
- means of identifying sites unrecorded on current maps.

Health Issues

- long-term impact of emissions and discharges on aboriginal people living in the area, taking into account extended exposures based on typical water consumption, food ingestion, air exposure

REFERENCES TO OTHER SOURCES OF INFORMATION

Government of BC

- A Guide to Aboriginal Organizations and Services in British Columbia (provides addresses and phone/fax numbers): http://www.mcaws.gov.bc.ca/aboriginal_dir/guide.htm
- Profiles of First Nation Bands and Tribal Councils, Indian and Northern Affairs Canada, http://esd.inac.gc.ca/fnprofiles/FNProfiles_home.htm
- Archaeological Impact Assessment Guidelines and Archaeological Resource Handbook, Ministry of Sustainable Resource Management: http://www.srmwww.gov.bc.ca/arch/pubs/impweb/impact.html

- Environmental Assessment Office website and Project Information Centre: www.eao.gov.bc.ca
- Treaty Negotiation Office: http://www.gov.bc.ca/tno/
- Ministry of Water, Land and Air Protection: http://www.gov.bc.ca/wlap/
- Ministry of Sustainable Resource Management: http://www.gov.bc.ca/srm/

Government of Canada

- Aboriginal Business Canada: www.abc.gc.ca
- Canadian Environmental Assessment Agency: www.ceaa.gc.ca
- Consolidated Statutes of Canada: canada.justice.gc.ca/FTP/EN/Laws/Title/C/index.html
- Indian and Northern Affairs, Canada: www.inac.gc.ca
- Indian Bands in British Columbia, Department of Indian and Northern Affairs: http://esd.inac.gc.ca/fnprofiles/FNProfiles_home.html

Books of Interest

- Asch, Michael (ed.), Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference, Vancouver: UBC Press, 1997
- Cail, Robert, Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913, Vancouver: UBC Press, 1974
- Coull, Cheryl, A Traveller's Guide to Aboriginal B.C.: Whitecap Books, 1996
- Duff, Wilson, The Impact of the White Man, Victoria: British Columbia Provincial Museum, 1969
- Fisher, Robin, Contact and Conflict, Vancouver: UBC Press, 1977
- Harris, Cole, Making Native Space: Colonialism, Resistance, and Reserves in British Columbia, Vancouver: UBC Press, 2002
- Helm, June (ed.), The Handbook of North American Indians: Volume 6, Subarctic, Wash.: Smithsonian Institution, 1981
- Hill, Roger and Pam Sloan, Corporate Aboriginal Relations
- Kunin, Roslyn (ed.), Prospering Together: The Economic Impact of the Aboriginal Title Settlements in B.C.: Laurier Institute, 1998
- McKee, Chris, Treaty Talks In British Columbia, Vancouver: UBC Press, 1997
- Miller, J.R. (ed.), Sweet Promises: a Reader on Indian-White Relations in Canada: University of Toronto Press, 1991
- Miller, J.R., Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada, Toronto; Buffalo: University of Toronto Press, 2000
- Muckle, Robert J., The First Nations of British Columbia, 1998
- Suttles, Wayne (ed.), The Handbook of North American Indians: Volume 7, Northwest Coast, Wash.: Smithsonian Institution, 1990
- Tennant, Paul, Aboriginal Peoples and Politics: the Indian Land Question in British Columbia, 1849-1989, Vancouver: UBC Press, 1990
- Walker, Deward E. (ed.), The Handbook of North American Indians: Volume 12, Plateau, Wash.: Smithsonian Institution, 1998

Aboriginal Media

- Ravens Eye: www.ammsa.com/raven
- Kahtou, 5526 Sinku Drive, P.O. Box 192, Sechelt, BC V0N 3A0; (604) 885-7391
- Native Voice, 200-1755 E. Hastings, Vancouver, BC, V5L 1T1, (604) 255-3137
- Ha-Shilth-Sa (Nuu Cha Nulth)
- Secwepemec News (Shuswap), 345 Yellowhead Highway, Kamloops, BC V2H 1H1, (250) 828-9784

Other

- BC Superior Courts: www.courts.gov.bc.ca/welcome.htm (Haida v. British Columbia and Weyerhaeuser (2002) BCAA 462; Taku River Tlingit First Nation v. Ringstad et al (2002) BCAA 59)
- BC Treaty Commission: bctreaty.net
- Delgamuukw v. British Columbia: www.droit.umontreal.ca/doc/csc-scc/en/pub/1997/vol3/html/1997scr3_1010.html
- Henderson's Annotated Indian Act: http://www.bloorstreet.com/200block/sindact.htm
- Native Links: www.johnco.com/nativel/
- Turtle Island Native Network: www.turtleisland.org/front/_front.htm
- Centre for Indigenous Environmental Resources: www.cier.mb.ca/
- First Nations Environmental Network: www.fnen.org/
- First Nations Summit: www.fns.bc.ca
- Union of BC Indian Chiefs: www.ubcic.bc.ca/welcome.html
- First Nations Information Sharing (includes maps of claims land): www.bcfn.org/isp/
- Canada - Aboriginal Programs: http://www.bcfn.org/alt_funding/CCAP%20JUNE%202001.pdf

APPENDIX 2: GUIDANCE ON CONSULTING WITH THE PUBLIC

This appendix provides proponents with information and guidance on consulting with the public. The information is intended to assist proponents in gaining an understanding of the value of public consultation and to provide guidance on how consultation might be undertaken in relation to an environmental assessment.

PURPOSE OF PUBLIC CONSULTATION

Public consultation and participation in the environmental assessment process is intended to improve project design and decision-making by ensuring that community perspectives and issues about a project are known before the project proceeds to development. Benefits of public consultation may include:

- ensuring that public concerns relevant to the assessment are identified so they may be adequately addressed;
- identifying stakeholder groups that may need more comprehensive consultation efforts;
- providing useful local information and knowledge for completing the required baseline and impact assessment studies;
- improving overall community and public understanding of the project;
- preparing local communities and residents for managing the social, economic and land use impacts of a project;
- preparing interested workers and suppliers for training, employment and business opportunities related to the project;
- helping proponents to develop options to enhance positive effects of a project and prevent or mitigate adverse effects; and
- enabling more comprehensive information about a project proposal to be compiled for government decision-making.

CONSULTATION METHODS

Information Dissemination

Proponents should make information about the project proposal available to the public as early as possible. This information should be easily accessible and widely available. When providing general notices and information, details for obtaining further information should be clearly advertised. Examples of methods for providing public information include:

- publications such as brochures, newsletters and fact sheets
- exhibits or displays in public locations
- media notices and interviews by proponent representatives
- advertising in provincial, local and special interest newspapers
- project website.

Direct Consultation

Proponents are encouraged to contact those individuals with a direct interest in the project and give them an opportunity to provide feedback. Those who have a direct interest will vary in every case, but may include local community groups, adjacent landowners and local businesses. Providing opportunities for feedback is important to ensure that information has been received and understood.

It is also important that proponents provide opportunities to discuss the project with concerned members of the public face to face. Personal exchanges help to clarify the interests of the group and the basis for their support and/or concerns about a project. Such consultation gives proponents the opportunity to ensure that the details of the development proposal are correctly understood. Planned meetings or sessions at which people can meet and speak with the proponent will help the public to put a "face" to the project.

Examples of direct consultation include:

- public open houses
- public meetings or panels
- workshops and focus groups
- surveys and questionnaires (could include use of Internet or mail)
- phone lines (could include establishment of a toll-free number to respond to inquiries)
- television/radio call-in programs
- project specific mailing lists
- project site visits and field offices with locally-based staff
- interviews
- mediation and negotiation
- personal exchanges.

General information on select consultation methods that may be used during an environmental assessment is provided in Appendix 3 of the Guide.

Guiding Principles and Tips for Conducting a Public Consultation Program

Good public consultation emphasizes two-way dialogue, respect for different views, and finding a mutual basis for resolving concerns. The goals of public participation are more readily attained when the following guiding principles are followed:

- early identification and contact with the full range of individuals and groups who will want to be involved in project planning, before irrevocable decisions are made;
- providing the public with enough time to respond meaningfully;
- tailoring participation strategies to gain effective public input at each stage of the assessment prccess;
- two-way communication which promotes understanding and problem-solving; and
- ongoing consultation and follow-up regarding issues.

With respect to the public living in the vicinity of the project, the following questions may help focus consultation efforts on issues related to community values and public opinion.

- Is the proposal consistent with lifestyles in the community?
- Is the proposal going to alter the size or composition of the community?
- Is the community flexible and open to change? (i.e., is it a growing or evolving community or does it have very traditional values?)
- What has the proponent done to ensure that the project is consistent with community values?

The following are tips to keep in mind when developing a public consultation program.

Provide Comprehensive and Accessible Information: Do not assume that the public is already knowledgeable about the project proposal. Information presented should be comprehensive and designed to inform members of the public with different levels of knowledge. Technical studies and reports should include easy-to-understand summaries.

Consult Early: Make sure that your public consultation program is arranged to enable community views to be considered during the project design stage. A proactive and committed proponent will work to resolve issues early. Early issue identification and resolution will improve public acceptance of a proposal.

Identify a Spokesperson and be Available: Members of the public will want to put a face to the project. The best way to do this is to designate a spokesperson to act as the first point of contact for those interested in the proposal. Encourage the public to communicate its support for a proposal, as well as its questions, concerns and issues.

Be Flexible: Be prepared to adjust your process and timing to respond to public issues. Proponents are advised to err on the side of holding "one more meeting" to ensure that the public understands the proposal.

Be Objective: Make sure that when you present information about the project, particularly in print or broadcast media, that your focus is on informing the public about the project, not promoting the project. Material should be worded in a value-free, objective manner.

Be Transparent: A demonstrated commitment to a fair and open process will enhance credibility. Adequate public meetings and transparent issue resolution processes will also contribute to this credibility.

Be Neutral: There are effective ways of ensuring impartiality in the consultation process. Neutral, third party consultants are often used in public consultation, and are effective at focusing discussions about a proposal.

Be Inclusive: Involving stakeholders in issue resolution will build trust within the community; they will know their interests are taken seriously, and will feel they are providing meaningful input into decisions that will affect them. By permitting and promoting feedback, you will have a better sense of the level and quality of information available about your project.

APPENDIX 3: GUIDANCE ON SUBMITTING ELECTRONIC DOCUMENTATION

PURPOSE

The Environmental Assessment Office publishes key environmental assessment review materials (e.g., applications for environmental assessment certificates, review comments and other related information) through the web-based electronic Project Information Centre (ePIC). This enables all review participants to access information online at www.eao.gov.bc.ca. The web-based system can be accessed using both Netscape and Internet Explorer web browsers. The ePIC website is designed to complement the government's New Era Commitments for leadership in electronic government and for open and accountable government.

The purpose of this guideline is to assist project proponents and other review participants to develop and submit all documents in an electronic format that enables the Environmental Assessment Office to post the documents on the website in a consistent, timely and efficient manner. It is important for project proponents to understand and conform to these guidelines early in project planning, when initial studies and reporting that may become part of a forthcoming application are being conducted.

For further clarification and information on the following requirements, please contact the Project Information Centre by phone at (250) 356-7441, by fax at (250) 356-7440 or by e-mail at eaoinfo@gems5.gov.bc.ca.

SUBMISSION OF ELECTRONIC DOCUMENTATION

All electronic documentation required by the Environmental Assessment Office for inclusion on the Project Information Centre website must be submitted either on CD, 3.5 high-density diskette, or via e-mail.

All electronic documentation must be submitted in Portable Document Format (PDF) to the Environmental Assessment Office without security measures. If required by proponents, security measures will be enabled on the PDF files that are posted on the Environmental Assessment Office website.

It is recommended that all PDF files be no larger than 5 mb, and at no time greater than 10 mb in size. As appropriate, PDF files should be broken into logical sections (e.g., chapter 1, section 1, volume 1, etc.).

When assigning filenames, common sense should prevail. For example, the title and location within a document should correspond directly to the filename. For example, chap1.pdf would be chapter one, and fig_1.1.pdf would be Figure 1.1, as listed in the Table of Contents. All file names must be in lower case letters or numbers with no spaces. Dashes (-) and underscores (_) are acceptable, but slashes (/ or \) are not.

Tables, Pictures, Figures and Drawings

When submitting large documents (e.g., applications and appendices), please include the tables, pictures, figures and drawings in the correct locations throughout the document as it would be in paper format. If the Table of Contents lists tables, pictures, figures and drawings as separate documents, then please include them as separate files.

Table of Contents

Inclusion of the report's Table of Contents is vital and should be a separate document (e.g., toc.pdf). Submitting a Table of Contents as a separate file will enable the Project Information Centre to provide linkages to individual PDF files contained in the application and supporting materials, facilitating ease of navigation for the user.

Please ensure that electronic documentation accompanies formal submission of hard-copy documentation.

SUPPLEMENTARY GUIDE TO FIRST NATIONS:

THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT PROCESS

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1. INTRODUCTION

This "Supplementary Guide to First Nations" provides information on First Nation consultation and participation opportunities during a typical environmental assessment, and how First Nation issues are addressed. Readers should note that this document is not designed as a stand-alone guide. The information is supplemental to that provided in the "Guide to the British Columbia Environmental Assessment Process" and is to be read in conjunction with that document and the Provincial Consultation Policy.

The Environmental Assessment Office considers aboriginal interests in the environmental assessment process to ensure that legal obligations towards First Nations are met, First Nation issues and concerns identified, and adequate efforts made to address those issues and concerns. To accomplish this, specific First Nation consultation requirements are established for each assessment, within the framework of the Provincial Consultation Policy. For information on the legal and policy context for First Nation consultation, see Section 3.3 and Appendix 2 of the "Guide to the British Columbia Environmental Assessment Process".

Throughout Section 2 of this document, reference is made to relevant sections of the "Guide to the British Columbia Environmental Assessment Process" where appropriate. Therefore, for ease of reading, the "Guide to the British Columbia Environmental Assessment Process" is referred to simply as "the Guide".

2. FIRST NATION CONSULTATION DURING AN ENVIRONMENTAL ASSESSMENT

The *Environmental Assessment Act* includes provisions for notification and consultation. Specific First Nation consultation procedures, including the role and responsibilities of the proponent, are determined on a project-by-project basis. Consultation and participation activities provided to First Nations are opportunities for them to identify objectives, interests and concerns in relation to the proposed project, as well as provide information based on expert knowledge and expertise.

Environmental assessment involves several parties. Parties with the greatest interest in consultation with First Nations include the Province (Environmental Assessment Office and other provincial government agencies with regulatory responsibilities), proponents, and First Nations themselves. In addition, federal government agencies have an interest where the project is also subject to the *Canadian Environmental Assessment Act*.

The information in this section explains in more detail how First Nation consultation is addressed in a typical environmental assessment, with reference to the eight steps set out Section 5.1 of the Guide.

Step 1: Determining if the Environmental Assessment Act applies
Step 2: Determining the review path
Step 3: Determining how the assessment will be conducted
Step 4: Developing and approving terms of reference for the application
Step 5: Preparing and submitting the application
Step 6: Reviewing the application
Step 7: Preparing the assessment report and referring the application to ministers
Step 8: Deciding to issue/not issue an environmental assessment certificate

The table provided in Appendix 1 summarizes the roles and activities of the Environmental Assessment Office, the proponent and First Nations during an assessment.

2.1 PRE-CONSULTATION ASSESSMENT

When an environmental assessment is required for a proposed project, the Environmental Assessment Office will conduct a pre-consultation assessment. The pre-consultation assessment will determine which, if any, First Nations may have interests affected or impacted by the project. Evidence of arrangements between the proponent and First Nations showing First Nation support for the project may also be identified during this assessment. The information acquired through the pre-consultation assessment will help inform subsequent determinations with respect to the extent of consultation that may be required.

2.2 INITIAL CONSULTATION WITH FIRST NATIONS

First Nations identified in the pre-consultation assessment will be contacted by the Environmental Assessment Office and the proponent to determine whether or not they may have interests potentially affected by the project. This information will inform the determination of the scope of issues to be reviewed, and the assessment procedures to be followed. The Environmental Assessment Office will relay to proponents non-confidential information received from First Nations regarding the project and any proposals made by First Nations regarding the consultation process.

2.3 DEVELOPING AND ESTABLISHING ASSESSMENT PROCEDURES AND CONSULTATION REQUIREMENTS

The Environmental Assessment Office is responsible for determining project-specific assessment procedures and consultation requirements (Step 3), including First Nation consultation requirements to be placed on the proponent and consultations to be undertaken by the Environmental Assessment Office. Procedures and requirements related to First Nation consultation are developed consistent with the Provincial Consultation Policy (2002), or the most up-to-date version of that policy, to ensure that legal obligations to consult First Nations in relation to the proposed project are met. While there are separate obligations related to First Nation consultation, aboriginal people also participate in environmental assessments as part of the broader public.

First Nation consultation requirements are developed using information obtained through the pre-consultation assessment, information from First Nations themselves, and other existing information (e.g., archaeological overview assessments, impact assessments, legal advice etc.). The Environmental Assessment Office will involve federal agencies and provincial agencies that may have post-certification consultation obligations to ensure consultation requirements are integrated to the extent practicable.

The Environmental Assessment Office issues a procedural order to establish the scope of the assessment and the procedures and methods to be used. In most cases, the procedural order will provide for First Nation consultation arrangements to be developed as the assessment proceeds. Procedures and requirements of the assessment related to First Nation consultation may include:

- notifying First Nations when the application is accepted for review, when orders are issued by the Environmental Assessment Office, and when a decision is made by ministers;
- providing information on the project to First Nations in an understandable form, the assessment process, the consultation process, and the requirements placed on proponents;
- providing opportunities for First Nations to identify interests and comment on documents such as draft consultation plans, draft terms of reference for the proponent's application, the application, consultation reports, and draft assessment reports;
- providing opportunities for First Nations to participate on committees, working groups, etc. that may be established as part of the assessment process;
- monitoring and assessing the proponent's consultations; and
- providing opportunities to discuss impacts on First Nation interests, how those interests may be addressed or accommodated, and how issues relevant to the environmental assessment may be resolved.

In general, requirements placed on the proponent include:

- consulting directly with First Nations;
- carrying out the consultation program set out in the application;
- carrying out any additional consultation measures that may be specified by the Environmental Assessment Office;
- reporting on consultation activities;
- reporting on the issues identified by First Nations through consultations; and
- reporting on how the proponent proposes to address and/or attempts to accommodate any potential adverse impacts.

As part of the assessment, First Nations may be asked to provide information on a range of issues, including Traditional Knowledge (sometimes referred to as Traditional Ecological Knowledge) and information about asserted current use of lands and resources for traditional purposes. Other information may be sought to assess the soundness of any assertions with respect to aboriginal rights and/or title. If First Nations choose not to participate in the environmental assessment, not to respond to consultation efforts by the proponent or the Environmental Assessment Office, and not to provide information to the proponent or the Environmental Assessment Office, the proponent may be required to identify and report on First Nation interests through other means, such as independent studies or literature reviews.

2.4 TERMS OF REFERENCE FOR THE APPLICATION

The terms of reference for the application contain the detailed information and consultation requirements that the proponent must address in its application (Step 4). The terms of reference are developed by the proponent based on an issue identification and scoping process. First Nations are consulted by the proponent and the Environmental Assessment Office during the development of the terms of reference to ensure all potential effects and issues of concern to First Nations that are relevant to the assessment are identified and considered. The final terms of reference must be approved by the Environmental Assessment Office.

2.5 PREPARATION OF THE APPLICATION

The proponent is responsible for preparing the application in accordance with the approved terms of reference (Step 5). This will involve conducting all the required studies and consultation measures, and reporting on them. The proponent may also consult First Nations regarding the terms of reference for individual studies that are of interest to First Nations.

Before accepting an application for review, the Environmental Assessment Office must ensure the application contains all the required information, as established in the terms of reference, and will assess the adequacy of the proposed First Nation consultation program. Once the application is accepted, the Environmental Assessment Office will require the proponent to provide additional copies of the application to First Nations as appropriate. Following the acceptance and receipt of the necessary copies of the application, First Nations will be notified and advised of the proposed timeframe for providing comments to the Environmental Assessment Office, and any other procedural measures identified in the procedural order.

2.6 REVIEW OF THE APPLICATION AND ADDRESSING FIRST NATION INTERESTS

The review of the application is conducted in the manner set out in the procedural order (Step 6). First Nations are formally notified of the review by the Environmental Assessment Office and invited to provide comments.

The Environmental Assessment Office and the proponent will discuss with First Nations and other parties how to prevent, mitigate, or accommodate any potential adverse effects the project may have on First Nation interests. Discussions are normally based on information provided in the application and associated studies, comments received from First Nations and other parties, information provided by First Nations, and other relevant information.

During the application review, the Environmental Assessment Office will assess whether the proposed project is likely to result in an infringement of possible aboriginal rights and/or title. In this assessment, the following questions may be considered:

- Does the proposed activity potentially interfere with asserted aboriginal activities on the land?
- Will the project provide for First Nation involvement or economic benefit?
- To what extent, if any, will the activity change or damage the nature of the land or the availability of resources?
- Will the project affect renewable resources and the ability to exercise aboriginal rights?
- Will any of the land be sold to third parties as part of this activity?
- Will long term leases or tenures be provided to third parties? If so, are they renewable, and does the renewal involve further changes to the land or further extraction of resources?

The Environmental Assessment Office may vary the scope of the assessment and/or the procedures set out in the procedural order, if required, to allow for changes related to First Nation participation in the review process, changes to review timelines, or further attempts to accommodate First Nation interests.

If, despite Environmental Assessment Office or proponent attempts to consult, a First Nation chooses not to cooperate or identify its interests or how they may be affected by a project, the Environmental Assessment Office will consider how the ministers can best make an informed decision. Factors that may be considered include the chronology of attempts to consult (e.g., efforts made to meet with the First Nation and reminders of opportunities to comment), reviews of existing information (e.g., the Environmental Assessment Office may require the proponent to conduct a literature review or independent study to identify First Nation interests), and legal advice.

If the Environmental Assessment Office concludes that there is a likelihood that project certification could result in an infringement of aboriginal rights and/or title, the Environmental Assessment Office will assess whether any potential infringements could be justified and whether further attempts should be made to address the issues and reach workable accommodations or negotiated resolutions. All such actions and the outcomes will be documented in the assessment report provided to ministers.

2.7 ASSESSMENT REPORT AND MINISTERIAL DECISION

On completion of the application review, the Environmental Assessment Office prepares an assessment report, any recommendations to ministers and the reasons for the recommendations. The assessment report identifies First Nation comments and issues raised in relation to the project, the Province and the proponent's responses to those issues, and how First Nation issues have been or could be addressed. First Nations will normally be consulted in the preparation of the assessment report, and a draft of the report will in most cases be distributed to First Nations for review and comment before being finalized and forwarded to ministers. In this way, ministers are apprised of First Nation views on the project, and are able to take those into consideration in making their decision on whether to issue an environmental assessment certificate.

The application, assessment report, recommendations and reasons are referred to the ministers responsible for making a decision on issuance of an environmental assessment certificate. After receiving a referral, the ministers must make a decision within 45 days on whether to issue an environmental assessment certificate, refuse to issue a certificate, or require further assessment (Step 8). In doing so, the ministers must also consider whether the Province has met its constitutional and fiduciary obligations to First Nations. The Environmental Assessment Office will notify First Nations of the ministers' decision. The decision, assessment report and any recommendations and reasons will be made available through the Project Information Centre website, and hard (paper) copies may be provided to First Nations if required. If ministers decide to issue an environmental assessment certificate, the proponent can proceed with the detailed planning necessary to obtain required permits and approvals.

3. FIRST NATION CAPACITY

Participation in the environmental assessment of major projects may present resource and capacity issues to some First Nations. Consequently, First Nations request funding from the proponent, the Environmental Assessment Office, or federal agencies for such purposes as:

- developing an understanding of the environmental assessment process;
- participating in meetings, including travel to attend meetings, participate on committees or in workshops, etc.;
- ceremonial costs;
- professional assistance to enhance participation;
- internal consultation and decision making; and
- economic benefit agreement discussions/negotiations.

On a case-by-case basis, the project proponent may negotiate funding with First Nations to assist in ensuring their participation in the assessment. However, there is no legal requirement for proponents to do so.

The Environmental Assessment Office may provide funding to assist First Nations to participate in the environmental assessment process. Such funding is available subject to appropriations and is provided according to government guidelines. It is intended to assist with such things as travel and technical expertise. It is not intended to duplicate studies or conduct parallel reviews.

Federal departments such as the Department of Indian and Northern Affairs may also provide funding in some cases. The Canadian Environmental Assessment Agency may provide funding when the project is subject to a panel review under the Canadian *Environmental Assessment Act*.

APPENDIX 1: FIRST NATION CONSULTATION: SUMMARY OF ROLES AND ACTIVITIES

The table in this appendix provides a summary of the roles and activities of the Environmental Assessment Office, the proponent, and First Nations related to First Nation consultation during an environmental assessment. The roles and activities are set out according to the steps in a typical environmental assessment described in Section 5.1 of the Guide. The table begins at Step 3, "Determining How the Assessment will be Conducted", since Steps 1 and 2 ("Determining if the *Environmental Assessment Act* Applies" and "Determining the Review Path") do not normally involve consultation.

ENVIRONMENTAL ASSESSMENT OFFICE	PROPONENT	FIRST NATION
Step 3: Determining How the Assessment will be Conducted		
1. Identify interested First Nations 2. Complete First Nation pre-consultation assessment 3. Advise the proponent of First Nations with potential interestsInitiate consultation (introductory information-sharing meetings with First Nations and proponent) 4. Assess soundness of any claim related to aboriginal rights and/or titleIntegrate consultation approach with other agencies 5. Initiate discussion/consultation with First Nations to: - identify interests - discuss the scope of issues to be assessed - develop Environmental Assessment Office and proponent consultation requirements - identify information to be provided by proponents and First Nations - develop the assessment process 6. Finalize procedural orderIssue procedural order	1. Provide project overview information (may include preliminary impact assessment, literature review) 2. Identify any arrangements with First Nations showing First Nation support for the projectInitiate consultation (introductory information-sharing meetings)	1. Participate in preliminary meetings with proponent and/or Environmental Assessment Office 2. Identify interests and provide input with regard to the scope of issues, consultation requirements and the assessment process 3. Provide comments on draft procedural order if requested
Step 4: Developing and Approving Terms of Reference for the Application		
1. Ensure consultation approach is integrated with other agencies 2. Continue discussion/consultation with First Nations to: - identify First Nation interests - determine the effects to be assessed - develop Environmental Assessment Office and proponent consultation requirements - determine information to be provided in the application 3. Finalize and approve terms of reference for the application 4. Make terms of reference available to First Nations through the Project Information Centre website or other means	1. Continue providing project information 2. Continue consultation to identify issues and interests and effects to be assessed 3. Develop terms of reference for the application	1. Continue discussions with the proponent and Environmental Assessment Office to identify interests 2. Provide input on the effects to be assessed, consultation requirements and other requirements to be included in the terms of reference 3. Provide comments on the draft terms of reference for the application
Step 5: Preparing and Submitting the Application for an Environmental Assessment Certificate		
1. Carry out consultation in accordance with the procedural order, Provincial Consultation Policy and legal requirements 2. Provide information on the assessment process to First Nations 3. Determine if the submitted application meets requirements and can be accepted for reviewIdentify any deficiencies in the application 4. Assess the adequacy of the proponent's information distribution and consultationIdentify need for additional consultation measures 5. Accept the application once it meets requirements	1. Carry out consultation in accordance with the procedural order and any legal requirements 2. Provide information on the project to First NationsRequest First Nations to identify interests in relation to the project 3. Develop terms of reference for individual studies as required 4. Conduct studiesConsider any First Nation comments 5. Prepare application, including:report on consultation undertaken and plannedreport on how First Nation interests will to be addressed or adverse impacts prevented, mitigated, or compensated 6. Submit the application for review 7. Upgrade the application if required	1. Provide input to assist with studies, including development of terms of reference for studies of interest 2. Provide information to substantiate any assertions with regard to interests and concerns

ENVIRONMENTAL ASSESSMENT OFFICE	PROPONENT	FIRST NATION
Step 6: Reviewing the Application		
1. Notify First Nations of acceptance of application 2, Conduct review in accordance with the procedural order, Provincial Consultation Policy and legal requirements 3. Notify First Nations of opportunities to comment on the application 4. Involve First Nations in accordance with the procedural order, Provincial Consultation Policy and legal requirements 5. Consider the impacts on First Nation interests (and possibly obtain legal advice on soundness of assertions) 6. Ensure information is made available to First Nations through the Project Information Centre website or other means 7. Notify First Nations regarding the availability of information 8. Consider First Nation comments and issuesIf required, vary the scope of assessment and/or procedures, including the requirements for further consultations 9. Prepare consultation chronology (meetings, letters, site visits, phone calls, and other efforts made by Environmental Assessment Office and proponent to obtain information about First Nation interests) 10. Assess potential infringements, justification, need for accommodation/negotiation etc.	1. Provide copies of the application to First Nations 2. Carry out consultation in accordance with the procedural order, consultation plan and any legal requirements 3. Carry out any additional consultation measures required by the Environmental Assessment Office 4. Respond to comments submitted on the application 5. Propose additional measures to address outstanding issues	1. Identify contact person to represent First Nation interests 2. Participate in the review process by: - submitting comments on the adequacy of the proponent's consultation report and consultation plan - submitting comments on the application and impacts on First Nation interests - providing information to support claims - participating in any working groups, committees etc. that may be established for the assessment - providing advice, analysis and recommendations to the proponent and Environmental Assessment Office
Step 7: Preparing the Assessment Report and Referring the Application to Ministers1		
1. Prepare the assessment report, including information on First Nation interests and how they are to be addressed 2. Advise ministers of: - First Nation comments/positions - the potential for any unjustifiable infringements of aboriginal rights or title - the fulfillment of legal obligations		1. Provide comments on all or portions of the draft assessment report
Step 8: Ministers' Decision on Issue/Not Issue an Environmental Assessment Certificate		
1. Notify First Nations regarding the ministers' decision 2. Make information on the assessment report decision and any recommendations and reasons available to First Nations through the Project Information Centre website or other means	1. Continue any further information distribution, consultation or other measures that may be a condition of certification	

SUPPLEMENTARY GUIDE TO THE PUBLIC:

THE BRITISH COLUMBIA ENVIRONMENTAL ASSESSMENT PROCESS

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1. INTRODUCTION

This "Supplementary Guide to the Public" provides further information for members of the public who wish to gain an understanding of public consultation and participation opportunities during a typical environmental assessment. It also provided information on how public issues are taken into account and on how to make the most of opportunities for public participation. Readers should note that this document is not designed as a stand-alone guide. The information is supplemental to that provided in the "Guide to the British Columbia Environmental Assessment Process" and is to be read in conjunction with that document.

Throughout this document, reference is made to relevant sections of the "Guide to the British Columbia Environmental Assessment Process" where appropriate. Therefore, for ease of reading, the "Guide to the British Columbia Environmental Assessment Process" is referred to simply as "the Guide".

1.1 GOALS OF PUBLIC CONSULTATION AND PARTICIPATION

The purpose of public consultation and participation in an environmental assessment is to ensure that community perspectives and public issues in relation to a proposed project are identified and considered before decisions are made on whether the project proceeds to development. .

Goals of public consultation and participation include:

- ensuring that public concerns relevant to the assessment are identified, so that they may be adequately addressed;
- identifying stakeholder groups that may need more comprehensive consultation efforts;
- obtaining useful local information and knowledge for completing the required baseline and impact assessment studies;
- improving overall community and public understanding of the project;
- preparing local communities and residents for managing the social, economic and land use effects of a project;
- preparing interested workers and suppliers for training, employment and business opportunities related to the project;
- helping proponents to develop options to enhance positive effects of a project and prevent or mitigate adverse effects; and
- enabling more comprehensive information to be compiled about a project proposal for government decision-making.

1.2 WHY GET INVOLVED?

Projects that are subject to an environmental assessment may have the potential to impact a community or a region. While proponents are required to consider a range of factors in their project design, it is likely they may not be able to identify all issues. Public participation provides a means for proponents to learn about and incorporate local information, priorities and concerns into a project's design. It thereby contributes to better project planning. Public input is essential to fully identify all potential effects and issues associated with a project, so they may be adequately considered in the environmental assessment. Public participation in the environmental assessment process helps to ensure that community values and public goals for community development are considered in project planning and decision-making.

1.3 WHEN TO GET INVOLVED?

Early identification of potential impacts can assist in developing options to enhance positive effects and prevent or mitigate the adverse effects of a project. Therefore, the public is advised to get involved early and identify the issues that it would like addressed at the earliest opportunity. The earlier you make your concerns and ideas about a project known, the more likely the proponent will be able to address them and include them in project design. As the proponent progresses through the environmental assessment, and project design and mitigation plans are refined, it becomes more difficult to change project plans.

2. GENERAL ROLES AND RESPONSIBILITIES

2.1 WHAT TO EXPECT FROM THE ENVIRONMENTAL ASSESSMENT OFFICE

The Environmental Assessment Office leads and manages each environmental assessment according to the requirements of the *Environmental Assessment Act*, the accompanying regulations, and the procedural order issued for that assessment (see Section 5.1 of the Guide for an overview of a typical environmental assessment). Environmental Assessment Office staff play an important role in clarifying the environmental assessment process for all those participating in the review. They are able to provide helpful advice with respect to the public consultation program and the environmental assessment in general.

The following summarizes the major responsibilities of the Environmental Assessment Office with respect to public consultation and participation.

Advice and Direction: providing advice and direction to the public about consultation and participation opportunities throughout the environmental assessment process.

Notification placing notices related to the assessment on the Project Information Centre website; sending letters of notification regarding the application to parties on the project e-mail distribution list; providing project updates as the review proceeds; and directing the proponent to issue public notices.

Project Information Centre: ensuring access to information by placing documents related to the project on the Project Information Centre website, and arranging for documents to be available in the region of the proposed project, as appropriate, where Internet access is inadequate.

Establishing Appropriate Forums for Public Input on Technical Issues: as appropriate, holding meetings that are open to the public and hosting public workshops or other forums for facilitating public consideration of technical issues.

Establishing Public Comment Periods: ensuring adequate opportunities for the public to identify interests and provide comments on project proposals.

Assessing the Adequacy of Consultation: monitoring and assessing the proponent's public consultation activities, including, in most cases, preparing a written assessment of the proponent's consultation program during the 30 day screening of the application.

Consulting with the Public: in some cases, undertaking public consultation, either alone or jointly with the proponent, to assist in identifying and addressing public issues and concerns.

Considering Public Issues: ensuring public concerns and interests that are relevant to the assessment are discussed and taken into account.

Reporting on Public Issues: at the end of the assessment, providing the ministers an assessment report that states public issues and how they have been, or could be, dealt with.

2.2 WHAT TO EXPECT FROM PROJECT PROPONENTS

The following summarizes the major responsibilities of the proponent with respect to public consultation and participation.

Public Notification and Advertising: issuing public notices about the environmental assessment, and advertising in relation to the availability of project documentation for review and public consultation activities and events.

Adequate Distribution of Information: providing information on the proposed project in an understandable form to the public and stakeholder groups in communities potentially affected by the project.

Meaningful Public Discussions: undertaking discussions with the public and community groups, using appropriate methods to identify and analyze public concerns.

Conducting a Public Consultation Program: developing and carrying out a public consultation program, providing details of the consultation program in the application, and carrying out additional consultation measures that may be specified by the Environmental Assessment Office.

Consultation with Specified Members of the Public: undertaking consultations with any additional persons and organizations identified by the Environmental Assessment Office that may have interests affected by the proposed projects.

Reporting on Public Consultations: reporting on the consultations undertaken and the results of the consultations.

Responding to Issues Raised: arranging for follow-up consideration of, and response to, specific issues and concerns identified by the public during consultation; providing information and cooperating with the Environmental Assessment Office to address public issues and concerns; and developing appropriate modifications to project design and implementation to address concerns.

Reporting on Issues: reporting on issues and concerns identified by the public through consultations, and how the proponent proposes to address any potential adverse impacts.

3. CONSULTATION AND PARTICIPATION DURING AN ENVIRONMENTAL ASSESSMENT

This section provides further information on public consultation and participation opportunities in a typical environmental assessment, led and managed by the Environmental Assessment Office, with reference to the eight steps set out in Section 5.1 of the Guide.

Step 1: Determining if the *Environmental Assessment Act* applies
Step 2: Determining the review path
Step 3: Determining how the assessment will be conducted
Step 4: Developing and approving application terms of reference
Step 5: Preparing and submitting the application
Step 6: Reviewing the application
Step 7: Preparing the assessment report and referring the application to ministers
Step 8: Deciding to issue/not issue an environmental assessment certificate

The table in Appendix 1 summarizes the roles and activities of the Environmental Assessment Office, the proponent and the public during the assessment.

3.1 INITIAL CONSULTATION WITH THE PUBLIC

In many cases, a proponent will have contacted members of the public who may have an interest in the proposed project before discussions with the Environmental Assessment Office about the environmental assessment commence. These preliminary discussions normally provide the public with general information about the proposal and the opportunity to identify potential concerns about, or support for, the project. Initially, the proponent may contact the most readily identifiable stakeholders, such as adjacent landowners, and organizations such as local chambers of commerce or environmental groups.

Once it has been determined that the project is subject to the *Environmental Assessment Act* and that an environmental assessment will be required (Steps 1 and 2), the Environmental Assessment Office will encourage the proponent to continue identifying potentially affected members of the public and undertaking consultation activities as early as possible. The Environmental Assessment Office will conduct its own preliminary identification of potentially interested parties, and will advise the proponent of any additional parties that should be contacted.

3.2 DEVELOPING AND ESTABLISHING ASSESSMENT PROCEDURES AND CONSULTATION REQUIREMENTS

The Environmental Assessment Office is responsible for determining the project-specific assessment procedures and consultation requirements (Step 3), including public consultation requirements, which the proponent must undertake, and consultations, which the Environmental Assessment Office will undertake. The Environmental Assessment Office uses information obtained through the proponent's initial consultations, information provided from members of the public themselves, and other existing information in developing these requirements. The Environmental Assessment Office will involve federal agencies and provincial agencies that may have post-certification consultation obligations to ensure consultation requirements are integrated to the extent practicable.

The Public Consultation Policy Regulation (see Section 5.3.2 and Appendix 5 of the Guide) sets out general policies that the Environmental Assessment Office must take into account when determining the pubic consultation requirements for an environmental assessment. The policies relate to the implementation and assessment of the proponent's public consultation program, the provision of public notice, access to information, and formal public comment periods.

How the public is to be consulted

Consultation and participation activities are opportunities for the public to identify objectives, interests and concerns in relation to the proposed project. The Environmental Assessment Office and/or the proponent may use various consultation methods including:

- open houses and public meetings,
- workshops and focus group sessions,
- project site visits,
- presentations to stakeholder groups, and
- participation on committees or working groups.

Further information on consultation methods that may be used in an environmental assessment is contained in Appendix 3 of the Guide.

How the public is provided with notice

The Environmental Assessment Office usually notifies the public by posting on the Project Information Centre website, newspaper advertising, issuing open letters or any other means that it considers satisfactory. The proponent normally provides notification by advertising in local newspapers published near the proposed project. If there are significant provincial or regional interests, notices may be required in newspapers with a broader distribution.

Opportunities for the public to provide comments

Formal public comment periods are established to ensure guaranteed opportunities for members of the public to express their views during the course of the assessment. During comment periods, the public is invited to submit comments to the Environmental Assessment Office on the proposed project and on key documentation.

Comment periods are most likely to occur in connection with draft terms of reference for an application and on the application itself. If a significant supplement or addendum to the application is needed to address certain issues more fully, an extension to the comment period or an additional comment period may be needed. Specific time limits will be set for any public comment periods. These limits will be identified in the public notices issued by the Environmental Assessment Office and/or the proponent. Comments may be submitted by mail, fax or e-mail, as specified in the public notices.

3.3 TERMS OF REFERENCE FOR THE APPLICATION

The terms of reference for the application contain the detailed information and consultation requirements that the proponent must address in its application (Step 4). The proponent first prepares draft terms of reference, which are submitted to the Environmental Assessment Office. The Environmental Assessment Office coordinates a review of the draft terms of reference, which may include a formal, time-limited public comment period. A comment period at this stage would be to determine whether or not the draft terms of reference address all the potential effects and issues of public concern that are relevant to the assessment. In addition, the public may have the opportunity to comment on any proposed consultation program included in the draft terms of reference.

Once all comments have been considered and any required changes made to the draft terms of reference, this document is finalized and approved by the Environmental Assessment Office. The approved terms of reference are made available on the Project Information Centre website.

3.4 PREPARATION OF THE APPLICATION

The proponent is responsible for preparing the application in accordance with the approved terms of reference (Step 5). This will involve conducting all the required studies and consultation measures. Once the application is prepared, the proponent submits it to the Environmental Assessment Office. The Environmental Assessment Office may only accept an application for review if it contains the required information, including any information related to public issues.

The Environmental Assessment Office may assess the pubic consultation measures undertaken and proposed by the proponent, and may identify any additional measures that are necessary to ensure adequate consultation with the public. Additional measures could pertain to consultation with the general public or with specified parties, and could be in relation to such things as provision of public notices and access to information. Either the proponent or the Environmental Assessment Office may be required to carry out the additional consultation measures, and may be required to do so within a specified time period.

3.5 REVIEW OF THE APPLICATION AND ADDRESSING PUBLIC ISSUES

Once the Environmental Assessment Office accepts an application for review (Step 6), the public is notified, advised where the application can be viewed, and invited to provide comments. Both the Environmental Assessment Office and the proponent may be required to undertake notification. The intent of notification is to reach individuals who may want to participate in the review or may be affected in some way by the project, including but not limited to, residents of the community in which the project is located and residents of adjacent communities.

The length of the public comment period on the application is normally determined by the Environmental Assessment Office, taking into account anticipated public interest, extent of pre-application consultation and other factors. The start and end dates for the public comment period will be specified in the notices issued by the Environmental Assessment Office and/or the proponent.

Members of the public are encouraged to submit their comments on the application as early as possible during the comment period, so the issues can be considered and addressed early. However, all comments should be submitted in time to ensure they are received by the Environmental Assessment Office before the public comment period closes.

Public comments received by the Environmental Assessment Office during a public comment period are filed on the Project Information Centre website. For comments to be placed on the Project Information Centre, they must include the name of the submitter. All comments are posted as originally submitted, except where content must be severed in accordance with the *Freedom of Information and Protection of Privacy Act*. If the person submitting the comments advises that they do not wish to have their address made public, that information will be deleted from the comments posted on the website. The proponent will be provided an opportunity to respond to comments, and a time limit may be specified for the submission of such responses.

The Environmental Assessment Office will discuss with the parties involved in the review how to prevent, mitigate, or accommodate any potential adverse effects the project may have on public interests. Discussions will be based on information provided in the application and associated studies, comments received from the public and other parties, and other relevant information. The review may also include public participation opportunities, such as working on technical committees or participating in workshops examining specific issues.

The Environmental Assessment Office will keep track of issues raised by the public and other parties (e.g., by means of an issue identification document which may be posted on the Project Information Centre website). Issues that are recorded may originate from a variety of sources, including:

- discussions that are facilitated by the Environmental Assessment Office, and any ensuing correspondence;
- written comments submitted to the Environmental Assessment Office by the public, First Nations and government agencies during the comment periods;
- analysis and advice recorded by the Environmental Assessment Office during project-related meetings, and any follow-up communications where further attention is needed;
- comments recorded by the proponent or Environmental Assessment Office at public consultation sessions; and
- proponent responses to comments.

3.6 ASSESSMENT REPORT AND MINISTERIAL DECISION

On completion of the application review, the Environmental Assessment Office prepares an assessment report, any recommendations to ministers and the reasons for the recommendations (Step 7). The assessment report identifies the comments and issues raised by the public and how they have been, or could be, addressed. All comments from review participants and responses from the proponent will be considered from the standpoint of their relevance to the assessment. If relevant, they will be taken into account in preparing the assessment report. In this way, ministers are apprised of the public's views on the project, and are able to consider those views in making their decision on whether to issue an environmental assessment certificate.

The application, assessment report, and any recommendations and reasons are referred to the ministers responsible for making the decision to issue/not issue an environmental assessment certificate. After receiving a referral, the ministers must make a decision within 45 days on whether to issue an environmental assessment certificate, refuse to issue a certificate, or require further assessment (Step 8). After ministers have made their decision, the Environmental Assessment Office will post the decision on the Project Information Centre website. The assessment report will also be made available through the Project Information Centre website, along with any related recommendations and reasons.

4. ADVICE ON HOW TO PARTICIPATE IN AN ENVIRONMENTAL ASSESSMENT

4.1 WHAT TYPE OF INPUT TO PROVIDE

The *Environmental Assessment Act* provides for the assessment of relevant environmental, economic[1], social, heritage and/or health effects of reviewable projects. Public input on any of these themes is considered by government and included in the assessment report.

Public comments should be focused on the proposed project and those components that are being reviewed in the assessment. Public input may include comment on issues such as:

- the methodology and scope of studies being undertaken as part of the environmental assessment review;
- substantive concerns about the impacts of the project; and
- the adequacy of the proponent's consultation program.

Comments about a proposal should be as clear and comprehensive as possible. When available, factual information should be provided to support any comments.

It should be remembered that environmental assessments are high-level reviews that determine the overall acceptability of a project. In many cases, specific details related to mitigation design are considered after the environmental assessment, when individual permit applications are reviewed.

4.2 TIPS FOR PARTICIPATING IN AN ENVIRONMENTAL ASSESSMENT

The following are some practical considerations that public participants should be aware of when providing input to an environmental assessment. Keep in mind that each assessment is unique, and that there may be issues and considerations raised that are not specifically addressed here.

Confirm that you are on the Environmental Assessment Office e-mail distribution list: while key interested members of the public or groups will already be known to the Environmental Assessment Office, you should confirm with the Project Information Centre that you are included on the project e-mail distribution list to ensure you receive notification once an environmental assessment commences and as project updates are published.

Contact the Environmental Assessment Office: as the neutral administrator of the environmental assessment process, the Environmental Assessment Office is a key source of expertise and experience regarding environmental assessments. As appropriate, the Environmental Assessment Office consults with technical experts and regional staff within provincial government ministries, federal government agencies, and local governments to obtain advice and information related to specific issues.

Offer suggestions on how to consult: proponents are often receptive to suggestions on how, when, and with whom to consult.

Request government representation at project open houses and public meetings: it is usually helpful to have government representatives who are involved in the assessment attend public meetings to provide technical expertise and hear public comments directly.

Explore the feasibility of a public workshop on issues associated with the assessment: you may wish to suggest a list of invitees and appropriate times and venues for a public workshop, that could include government representatives, the proponent, technical experts and interested members of the public.

Visit the Project Information Centre website regularly: information on the Project Information Centre website is updated on an ongoing basis throughout the assessment. Visit the website regularly to keep up-to-date on new information as it becomes available.

Ask where copies of environmental assessment documents can be accessed: if you are able to undertake a detailed review of a proposal but are not able to download large documents from the Project Information Centre website, ask the Environmental Assessment Office where you can access hard (paper) copies of the relevant review materials.

Learn about technical issues: try to become familiar with the technical language used in an assessment in order to understand the project proposal and how it proposes to mitigate impacts.

Increase public awareness: attend open houses or public meetings to discuss the proposal.

Establish contact with other interested parties: if a proposed project is significant enough to require an environmental assessment, there will likely be a number of different community interests who will want to participate or provide comments on the proposal. Find out who else may share your interest, or have similar interests, and meet with them. This may include community groups, ratepayers' organizations, environmental groups, residents of neighbouring municipalities, local First Nations, the Chamber of Commerce, or other business interests.

4.3 QUESTIONS TO ASK

While the specific issues relating to a proposed project will be unique in every case, the following questions may help you focus your efforts in participating in the environmental assessment. These questions are not exhaustive, and should be considered as a guide only.

What may be the impacts of the project on the environment or human health?
This could include impacts or improvements to air quality, water quality, soil quality, noise concerns, biodiversity, and habitat protection.

What social and economic impacts is the proposed project expected to have?
This could include issues such as whether the project will have an impact on the local economy, existing businesses, the labour market, and employment opportunities, and whether the local infrastructure, such as transportation and social support services, is adequate to support the proposal or will benefit from the proposal.

What will be the effects on heritage resources?
This could include impacts and opportunities related to local archaeological sites, historic sites, heritage buildings or sites, and landscape features.

What level of detail will be addressed during the assessment, and what will be dealt with during the permitting phase?
The environmental assessment focuses on the impacts and benefits of the overall design of the project and its components. Typically, permitting deals with specific standards for implementing and operating different components of the project.

What technical studies are being conducted for the application?
Consider whether these technical reports will provide you with adequate assurance that your interests are addressed and understood.

What are the views of various government agencies and stakeholders about key issues?
Is there consensus or debate about methods and findings? How are the areas of debate resolved?

What mitigation measures are recommended to address your interests?
Who will be responsible for their success? What resources are required to ensure their success?

Are there other projects or precedents that can be used for comparison with the proposed benefits and impacts?
Inquire whether there are people who could be contacted, either locally or elsewhere, to discuss their experience with similar projects.

4.4 WHERE TO GET INFORMATION

The Environmental Assessment Office manages a web-based Project Information Centre that contains extensive records about projects subject to environmental assessment (see Section 7 of the Guide for further information on the Project Information Centre). Terms of reference for project applications, project applications, public notices, orders public and government comments, assessment reports, ministers' certifications decisions and other documents relevant to environmental assessments are available on the Project Information Centre website.

Hard copies of some documents may also be available in the region of a proposed project where Internet access is still inadequate. In this case, documents will be housed in public locations such as libraries. To determine if documents are available in a specific region and at which locations, contact the Project Information Centre.

Project Information Centre
Website: www.eao.gov.bc.ca
E-mail: eaoinfo@gems5.gov.bc.ca
Phone: (250) 356-7441 (Victoria)
Toll-free calls through Enquiry BC at 1-800-663-7867 or
(604) 660-2421 (Vancouver)
Fax: (250) 356-7440

APPENDIX 1: PUBLIC CONSULTATION: SUMMARY OF ROLES AND ACTIVITIES

The table in this appendix provides a summary of the roles and activities of the Environmental Assessment Office, the proponent, and the public related to consultation during an environmental assessment. The roles and activities are set out according to the steps in a typical environmental assessment described in section 5.1 of the Guide. The table begins at Step 3, "Determining How the Assessment will be Conducted", since Steps 1 and 2 ("Determining if the *Environmental Assessment Act* Applies" and "Determining the Review Path") do not normally involve consultation.

ENVIRONMENTAL ASSESSMENT OFFICE	PROPONENT	PUBLIC
STEP 3: DETERMINING HOW THE ASSESSMENT WILL BE CONDUCTED		
1. Advise the proponent of additional public with potential interests 2. Integrate consultation approach with other agencies 3. Initiate discussion/consultation with public to: - identify interests - discuss the scope of issues to be assessed - develop Environmental Assessment Office and proponent consultation requirements - develop the assessment process Issue procedural order	1. Identify interested public 2. Advise the Environmental Assessment Office of public with potential interests Provide project overview information (may include preliminary impact assessment, literature review) 3. Initiate consultation (introductory information-sharing meetings, public forums)	1. Attend meetings and/or attend public forums such as open houses 2. Identify interests and provide input on the scope of issues, consultation requirements and the assessment process
Step 4: Developing and Approving Terms of Reference for the Application		
1. Advise the proponent of additional public with potential interests 2. Ensure consultation approach is integrated with other agencies 3. Continue discussion/consultation with public to: - identify interests - determine the effects to be assessed - determine Environmental Assessment Office and proponent consultation requirements - determine information to be provided by the proponent in the application 4. Consider asking the public to comment on the draft terms of reference for an application before finalizing 5. Approve terms of reference for the application 6. Make terms of reference available to the public through the Project Information Centre website	1. Continue identifying interested public Advise the Environmental Assessment Office of public with potential interests 2. Provide project information to interested public 3. Continue consultation to identify effects to be assessed, consultation requirements and public issues to be included in the terms of reference 4. Develop terms of reference for the application	1. Attend meetings or public forumsIdentify interests and provide input on the effects to be assessed and consultation requirements 2. Respond to any invitations to comment on the draft terms of reference for the application
STEP 5: PREPARING AND SUBMITTING THE APPLICATION FOR AN ENVIRONMENTAL ASSESSMENT CERTIFICATE		
1. Carry out consultation in accordance with the procedural order 2. Determine if the application meets requirements and can be accepted for reviewIdentify any deficiencies in the application 3. Assess the adequacy of the proponent's public information distribution and consultationIdentify any additional consultation measures required 4. Accept the application once it meets requirements	1. Carry out consultation in accordance with the procedural order 2. Provide information on the project to the public 3. Request the public to identify interests in relation to the projectDevelop terms of reference for individual studies as required 4. Conduct studies 5. Consider any public comments Prepare the application, including: - report on consultation - consultation plan for application review - report on how public interests will to be addressed or adverse impacts prevented, mitigated, or compensated 6. Submit the application for review 7. Upgrade the application if required	1. Respond to consultation opportunities and to invitations to identify issues of concern related to the project

ENVIRONMENTAL ASSESSMENT OFFICE	PROPONENT	PUBLIC
STEP 6: REVIEWING THE APPLICATION		
1. Notify the public of acceptance of application 2. Conduct review in accordance with the procedural order 3. Notify the public of opportunities to comment on the applicationInvolve the public in accordance with the procedural order 4. Make information available through the Project Information Centre website 5. Notify the public regarding the availability of information 6. Consider public comments and issuesIf required, vary the scope of assessment and/or procedures, including the requirements for further consultations 7. Prepare the assessment report, including information on public interests and how they are to be addressed	1. Carry out consultation in accordance with the consultation plan 2. Carry out any additional consultation measures required by the Environmental Assessment Office 3. Respond to comments submitted on the application 4. Propose additional measures to address outstanding issues	1. Respond to invitations to comment on the application and impacts on public interests 2. Respond to opportunities to participate in the assessment process
STEP 7: PREPARING THE ASSESSMENT REPORT AND REFERRING THE APPLICATION TO MINISTERS		
1. Prepare the assessment report, including information on public interests and how they are to be addressed 2. Advise ministers of public issues and interests and how they have been/could be addressed		
STEP 8: MINISTERS' DECISION ON ISSUE/NOT ISSUE AN ENVIRONMENTAL ASSESSMENT CERTIFICATE		
1. Notify the public regarding the ministers' decision 2. Make information on the assessment report, decision and any recommendations and reasons available through the Project Information Centre website	1. Continue any further information distribution, consultation or other measures that may be a condition of certification	